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1973 HOUSING AND URBAN DEVELOPMENT LEGISLATION

HEARINGS
BEFORE THE
SUBCOMMITTEE ON
HOUSING AND URBAN AFFAIRS
OF THE
COMMITTEE ON
BANKING, HOUSING AND URBAN AFFAIRS
UNITED STATES SENATE
NINETY-THIRD CONGRESS
FIRST SESSION
ON
PROPOSED HOUSING AND COMMUNITY DEVELOPMENT
LEGISLATION FOR 1973

PART 2

JULY 30, AND 31, 1973; AND APPENDIX

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1973 HOUSING AND URBAN DEVELOPMENT LEGISLATION

MONDAY, JULY 30, 1973

U.S. SENATE,
SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS,
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS,
Washington, D.C.

The subcommittee met at 10:10 a.m., in room 5302, Dirksen Senate Office Building, Senator John Sparkman, chairman of the subcommittee, presiding.

Present: Senators Sparkman, Williams, Cranston, and Brock.

The CHAIRMAN. Let the committee come to order, please.

There are 11 persons to testify today.

That means we must get started and must move pretty fast. I hope each person testifying will limit his testimony. I don't want to blot out any of the testimony but we are going to have to limit it if we are to complete our schedule in the time we have.

The Senate meets at 11 o'clock. We don't have to be there at 11, but I imagine the fact the Senate is meeting probably forecasts an early vote. That vote is important, so we had better move along as fast as we can.

Our first witness is Lewis C. Murphy, mayor of the city of Tucson, Ariz. Mr. Mayor, if you will come around.

Let me say to all of you your typed statements will be printed in the record in full. Each one may read it, summarize it, and discuss it as he sees fit, but the entire statement will be printed in the record.

Mr. MURPHY. Where would you like me, Mr. Chairman?

The CHAIRMAN. Right in front of the microphone, Mayor. We are very glad to have you. We do have a copy of your statement. Proceed as you see fit.

STATEMENT OF LEWIS C. MURPHY, MAYOR OF THE CITY OF TUCSON, ARIZ.

Mr. MURPHY. I appreciate very much the privilege of addressing the committee this morning. I recognize the time constraints, and I shall keep my remarks to no more than, I hope, 5 or 6 minutes.

I also understand that you are addressing housing legislation, and your staff has been kind enough to accommodate me in terms of my remarks addressing specifically the Better Communities Act and the Community Development Block Grant bill, 1743 and 1744.

I recognize that Mayor Gribbs of Detroit and other various interest groups have had an opportunity to meet with and to address this com-

mittee, and I intend to address my remarks to this committee in context of the impact of better communities legislation in my community specifically.

I am also delighted to have the opportunity as a mayor of a smaller town, perhaps in excess of a quarter million people, but a western mayor—an opportunity to come and tell you, Senator, what we think the Better Communities Act will do in our community and how very badly we feel we need it.

Tucson, Ariz., is a community of approximately 300,000 people. Of that, approximately 24 percent of our entire population is Spanish-speaking predominantly; approximately 3 percent is black; approximately 10 percent of family incomes are below what we consider to be poverty level; and approximately 9 percent of our housing is overcrowded.

We are satisfied in our community that we know what our problems are and that we really don't need the guidance and direction of the Federal Government in terms of identifying priority requirements with specific reference to community development needs and poverty requirements.

We have been particularly blessed in our community through the model cities legislation. We have had an opportunity to know and understand and work with and realize the benefits of model cities legislation. We have learned a great deal from the opportunity to address specifically the community development needs in our city through this model cities demonstration project funding capability.

We are also, Senator, one of the 20 selected cities in the Nation representing the planned variation project cities which has pumped additional funds into our community, but has done it on a basis which will allow us to address communitywide needs as distinguished from those needs of a given specific model cities defined area, geographical area, within our community.

Let me cite just as an example, if I might, the tremendous difference between an application process under a model cities grant and a planned variation grant. The second year model cities application in our community was 384 pages long. Our planned variation application was 79 pages long. The tremendous flexibility that has been built into not only priority determination on a communitywide basis but also the horrendous Federal redtape of doing business with our Government has been substantially reduced, in our opinion.

The advantages to our community of model cities and planned variation development cannot be overemphasized, in my opinion. We have had an opportunity to consolidate all planning and operation considerations of our social and physical programs in our city through a newly created department of our city government. This has been allowed through model cities and planned variation fund capabilities. We have had citizen input of meaningful significance which has allowed us on a communitywide citizen participation basis to address the needs in our community. We have had through this concept the chief executive review and comment process, the CERC process, which allows the chief executive officer of our community and his council to be aware of all Federal funding programs in our communitywide area. This has given us the opportunity to cooperate with other local gov-

ernment units and also to coordinate. So we feel that the advantages have been significant.

Our first year of better communities funding, if it comes about, will be approximately \$5,600,000. This is more than our Model Cities funding, but less than our Model Cities funding plus planned variation. I think the key to this is an awareness on our part that the significant programs undertaken as a concept of our Model Cities project will terminate with respect to funding on July 1, 1974. We know that planned variation funding will terminate. We expect that. We also understand that the legislation creating the Model Cities demonstration availabilities will also terminate effective that date.

Our community has been singularly successful we feel, and we are advised on a national level that our Model Cities projects have been extremely successful. We have been able to see on a day to day basis the effect of massive projections of fund capabilities into the poverty needs in our community. We are faced with a total loss of all that funding capability without the capability of the Better Communities Act or community development special revenue sharing, or whatever it is ultimately called.

We have in our community approximately \$7.5 million in outstanding conventional urban renewal commitments. This, we recognize, will not be taken away from us. Estimating the average rate of additional costs for amendatories at about 8 percent per year, this would create a \$599,000 demand on the revenue sharing funds in the first year, assuming we have Better Communities Act legislation.

I can't overemphasize, I believe, the stress that our community puts upon the Tucson Model Cities funding level and the probability or possibility, if not actuality, that that funding will be terminated. We are satisfied that the legislation which is being addressed by this committee is more important probably to our community than any other single piece of legislation under consideration. We feel that the funding level would properly be adjusted higher than the proposed \$2.3 billion. But I mean to indicate that notwithstanding a loss to our community that we can live with it without sustaining substantial hardship. What we cannot live without, Mr. Chairman, is the prospect that no Better Communities Act or no Community Development Block Grants revenue sharing bill would be passed by Congress. That we cannot live with in our community.

I think, therefore, sir, if I may, to summarize, the thrust of my comments would be that the need to pick up the slack in terms of the anticipated loss of Model Cities funding capability and the successes which we have known through this demonstration project are extremely important to be carried on in my community.

We are also very excited about the prospect of lesser redtape involvement with the bureaucracy of the Federal Government.

The categorical grants have served a purpose because they were substantially better than nothing. But the concept which requires fitting needs to availabilities I think has proved that it is no longer the way of thinking which will ultimately arrive to the better benefit of all communities.

I am satisfied, sir, that the mayors of this country, and certainly myself and certainly all Model Cities mayors that I am aware of in

this country, want the responsibility which this legislation will offer them; and I think those Model Cities in the country have proved that we are prepared to successfully accept and undertake this responsibility.

We recognize problems with the pending legislation. I do not offer myself as an expert on either of these proposed bills. I am not here to discuss specifically the mechanics of them with you. What I am concerned about is that we have legislation this year. I recognize the application issue problems. I know that there is considerable concern about the formula, the hold harmless effect and its prospective length, but I am hoping that you, sir, and your committee will address these problems and give me legislation this year.

And I think with those remarks, Senator, I would conclude my formal comments, again with my deep appreciation for the opportunity to meet with you and this committee and to have my testimony on this record. And I would be pleased to address myself in response to anything which you might wish to pose.

The CHAIRMAN. Thank you very much, Mr. Mayor. Let me ask you this: Did I understand you correctly to say that you did not want legislation that would substitute block grants for category grants?

Mr. MURPHY. No, sir. I said—I hope I said—just the opposite.

The CHAIRMAN. Well, I was wondering.

Mr. MURPHY. I'm sorry. If I got my tongue moving faster than my head I apologize.

The CHAIRMAN. Well, I was puzzled by the statement. Let me ask you: You know last year we passed a bill through, the community development—are you familiar with the terms of that bill as we passed it last year? It did not become law because the House did not—

Mr. MURPHY. Yes; I am generally familiar with it. As I recall, Senator, it was called Community Development Revenue Sharing.

The CHAIRMAN. Well, it was to be financed through revenue, special revenue. Under that was there any category of program that you are getting funding now that would be omitted?

Mr. MURPHY. Well, specifically, of course, Model Cities funding as we know it will terminate. If you are leading me into the situation of why don't we just continue with categorical capital grants, I think I suggested that we have lived with this long enough to understand that it is better than nothing. By the same token, we feel that there are a great many problems with it in terms of not only the redtape involved in doing business with the Department of Housing and Urban Development, but the many restrictions and constrictions involved in doing business. Also the fact that a community, in my opinion, finds itself in a situation if it is to participate of attempting to fit its needs to their availabilities. We feel that there is far more flexibility inherent in the concept of special revenue sharing.

The CHAIRMAN. Well, you realize that under this special revenue sharing the proposal of the administration last year was to hold harmless, to make certain that no city, community, whatever the local government might be, got less funds than it got the year before, but that instead of being by categories there would be block grants and leave it up to the community to decide what types of community development activities it wanted to spend the money on.

Mr. MURPHY. I was not necessarily dissatisfied with last year's proposed legislation, but disappointed that it didn't pass.

The CHAIRMAN. Well, it passed here.

Mr. MURPHY. Yes.

The CHAIRMAN. And I am certain we will pass another one, and my guess would be that it will be pretty much along the lines of the one last year.

Mr. MURPHY. I think your comment points out the major concern that we mayors have, Senator, and that is that perhaps something will not be passed, and that we would find virtually intolerable. At least my community would.

The CHAIRMAN. That something will not be passed?

Mr. MURPHY. Yes; I say we fear that.

The CHAIRMAN. Of course, we can answer only for the Senate.

Mr. MURPHY. I understand.

The CHAIRMAN. When they have hearings on the House side perhaps you had better go over there.

Mr. MURPHY. Thank you. I would like to have that opportunity.

The CHAIRMAN. Thank you very much, Mr. Mayor.

Mr. MURPHY. Thank you so much, Senator. I certainly appreciate it.
[Complete statement of Mayor Murphy follows:]

FOR RELEASE ON DELIVERY
EXPECTED AT 10 A.M. EDT
MONDAY, JULY 30, 1973

STATEMENT OF
LEWIS C. MURPHY
MAYOR OF TUCSON, ARIZONA
BEFORE THE
SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS
OF THE
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE
ON
S. 1743 and S.1744

Mr. Chairman, Senators, I am Lewis C. Murphy, Mayor of Tucson, Arizona. I am happy to meet with your Committee to discuss the proposed Better Communities Act (S. 1743) and the Community Development Block Grant bill (S. 1744), both of which were recently introduced.

I know you have already heard from various interest groups. They have given you their positions as spokesmen for their constituents throughout the country. I am going to limit my remarks to the question of how the Mayor of Tucson looks at the prospect of community development revenue sharing.

Tucson is a city of approximately 300,000 people. Almost 24 percent of the population is Spanish-speaking or Spanish-surnamed. 3.5 percent is black. 10.5 percent of family incomes are below the poverty level. 9.2 percent of our housing is overcrowded. I would like to submit for the record a brief table showing key statistics relating to my city.

We in Tucson have a good idea of what our problems are. I do not think we need any Federal help in defining those problems. Nor are we in the dark as to how to go about setting priorities and launching programs to meet those problems.

Tucson is a Model City. We have learned a lot in the course of this program. And so, I think, has the Federal government.

Let me give you an example. Because of the way in which the HUD guidelines were written, our second year Model Cities application amounted to 384 pages. As a result of Tucson being selected as one of the 20 Planned Variation cities, and since one of the "variations" was the minimization of red tape, our Planned Variations application amounted to only 79 pages. Even more importantly, our application was not second-guessed by HUD reviewers, as was the case in the early days of our Model Cities program.

What happened in Tucson when HUD loosened some of the Federal strings? What happened, for instance, when our city was allowed to use Model Cities funds on a citywide, and not just a one-neighborhood basis?

The Tucson Department of Community Development was reorganized to consolidate planning and operation of all physical programs in the city.

With citizen input, citywide priorities were set: transportation drug abuse, problems of the elderly.

The Chief Executive Review and Comment system, made possible by Planned Variation funds, gives my office a new overview capacity regarding all Federal funds coming into or expected to come into the city of Tucson. I want this overview capacity, and so does the City Council, because we want funds to be spent in Tucson within the framework of a community development plan. This framework is one which we in Tucson must put together and this is one of the

reasons I so strongly support community development revenue sharing with its stress on sure funding, with versatile dollars, on an objective needs basis, and with minimal Federal intervention.

How do the proposed Better Communities Act funding figures look to us in Tucson?

Our first year of BCA funding would be \$5,626,000; this assumes, of course, that the total funding figure would be \$2.3 billion. The fiscal year beginning July 1, 1974 would be the last year in which our \$3,117,000 Model Cities program would be calculated into the hold harmless amount. From the second year to the fifth, Tucson would receive more than \$4,000,000 per year, with \$4,568,000 in the fifth year as our city's "full formula amount."

As far as maintaining the currently funded Model Cities projects, I will tell you frankly that I do not feel locked into any such approach. Some projects deserve to continue, others do not. If \$5,626,000 in community development revenue sharing funds arrive in Tucson on July 1, 1974, the City Council and I are not going to consider \$3,117,000 of that total as "Model Cities funds"; they are going to be considered as "community development" funds for the city of Tucson.

You know that we have been required to be "comprehensive" in spending Model Cities funds; and we have been limited to spending those funds in blighted neighborhoods. But the arrival of community

development revenue sharing dollars will, I hope, mean that we can concentrate on our priorities and even spend some of our funds in areas which are not blighted. Such a strategy, if we should decide to undertake it, would not amount to a bypassing of the poor; it will amount to opening up new opportunities for the poor, opportunities which are not limited to their own blighted neighborhoods.

Tucson currently has almost \$7.5 million in outstanding conventional urban renewal commitments. The arrival of community development revenue sharing would not, of course, take these funds away. Estimating the average rate of additional costs for amendatories at about 8 percent per year, this would create a \$599,000 "demand" on the revenue sharing funds in the first year. Within the funding limits found in the proposed Better Communities Act, I am confident that we could handle this demand if we decided it was wise to do so. This would be an issue which my office, the City Council, and our urban renewal agency would consider jointly.

I have spent a few minutes discussing Tucson's Model Cities funding level and our expected need for urban renewal amendatory money, because I believe it is important for you Senators to hear from a Mayor that he believes that his city will have enough funds under Better Communities Act funding to embark upon significant new efforts. That is not to say, of course, that the funding level is "enough"; it is to say that the amounts being discussed for

Tucson under the Better Communities Act would not constitute a hardship, and the amounts are significant enough for us to look forward realistically to a period of important community development in Tucson.

What would constitute a hardship in my city would be if the Congress, in this session, would not pass a community development revenue sharing bill which would take effect as of July 1, 1974. Tucson must have a way of carrying on what is invaluable in our current community development efforts. That task looks manageable to me only if community development revenue sharing funds can be counted on for FY 1975 -- that is, beginning on July 1, 1974.

TUCSON MODEL CITIES STATISTICS

	Model Cities Area		City of Tucson	
	No.	%	No.	%
Population				
White	14521	26.4	186449	70.9
Negro	4016	7.3	9179	3.5
Spanish Speaking or Surname	33951	61.8	62850	23.9
Other	<u>2485</u>	<u>4.5</u>	<u>4455</u>	<u>1.7</u>
Total	54973	100.0	262933	100.0
Incomes of Families and Unrelated Individuals	No.	%	No.	%
Under \$3000	2266	19.7	6728	10.3
Median income	\$4326		\$6764	
Families with income	11643		65221	
from Social Security	3010	25.9	14089	21.6
from Public Assistance	1223	10.5	2209	3.4
below Poverty Level	2896	24.9	6867	10.5
Education	No.	%	No.	%
% 16-21 not H.S. graduates and not in school		27.1		11.2
Median school years completed	9.8		12.4	
H.S. graduates over 25 years old	17866	31.7	86875	63.0
Housing	No.	%	No.	%
All housing units	18810		89309	
Lacking some or all plumbing facilities	1296	6.9	1853	2.1
Occupied with more than 1.00 persons per room	3579	23.2	8533	9.2

Source: 1970 U.S. Census, Fourth Count, PHC (1)-218
 Urban Analysis Section, Evaluation Division, DURC, City of Tucson

The CHAIRMAN. Our next witness is Mr. Irwin Silver, vice president of the F. D. Rich Housing Corp., Stamford, Conn. Mr. Silver, if you will come around we would appreciate it very much. Glad to have you.

STATEMENT OF IRWIN SILVER, VICE PRESIDENT, F. D. RICH HOUSING CORP., STAMFORD, CONN.

Mr. SILVER. Thank you, Mr. Chairman, My name is Irwin Silver. I reside at 140 Hoyt Street, Stamford, Conn.

I would like to thank the chairman and the committee for inviting me to appear to make a statement and answer any questions regarding housing legislation.

As my résumé indicates, I have spent 21 years in the development and construction of various diversified types of housing.

For the past 11 years I have been a vice president of F. D. Rich Co.'s housing division as vice president for sales and development. The F. D. Rich Co. has developed and constructed housing under Federal programs, for various military services, and for nonprofit and limited dividend investors from Alaska to the Virgin Islands.

We did substantial construction of military housing in the State of Alabama.

The CHAIRMAN. Oh, yes? Where?

Mr. SILVER. In Selma, as a matter of fact.

The CHAIRMAN. The Air Force base.

Mr. SILVER. The Air Force base; yes, sir. That was not too long ago. Within the past 2 years.

The CHAIRMAN. Very good.

Mr. SILVER. The committee has copies of my statement, Senator, and in the interest of brevity, I will summarize my statement and make some additional comments.

Congress should reaffirm the national housing goal, and I suggest that Congress consider the following general areas: First, the need for housing in the United States, second, the role of the Federal Government in meeting housing needs; and third, the means by which housing needs can be met through Federal Government activities.

The housing goals set forth in the Housing Act of 1968, was 26 million units over a 10-year period, of which 6 million units were to be subsidized. Since that period, 1969 to 1972, 6,627,900 units have been produced, 3,772,100 units short of the goal. However, from its start in 1969 there were continual annual increases in production.

These statistics were taken from a Department of Commerce report, C-22.

I urge the Congress to maintain direct production subsidies even if a form of housing allowance is adopted. Allowances alone will not spur the production of housing. I would not be optimistic that increased purchasing power and increased demand by housing consumers will lead to an acceleration of the production of low, moderate, and middle-income housing without some production subsidies.

Those direct production subsidies should be broadened. This can be done, for example, by reducing developing cost, by lowering financing cost during construction, and by land acquisition write-downs. After completion of projects carrying costs should be reduced through lower

interest rates and longer periods of amortization, along with subsidizing local real estate taxes by adjustments or abatements.

Production subsidies can be broadened at less cost by working through State housing development corporations. Many States already have corporations of this type. Connecticut, State from which I am, for example, has a housing finance agency through which production of housing can be subsidized in the manner I have suggested. The Federal Government should support the sale of State housing development corporation bonds, and should make direct grants to State development corporations for the purposes of land write-downs and real estate tax adjustments.

Mr. Chairman, I would thank you and the committee again for allowing me to appear and make these few brief remarks. Thank you.

The CHAIRMAN. Let me ask you this. First you suggested that one of the things that could be done to help would be the changing of tax laws. Of course, you realize this committee has no jurisdiction over that.

Mr. SILVER. I recognize that.

The CHAIRMAN. That will have to be done through the Finance Committee, the Ways and Means Committees.

Mr. SILVER. If I may, Senator, I recognize that that is the case. However, the present tax incentives have spurred production of housing, and I would encourage this committee to make recommendations to the Finance Committee.

The CHAIRMAN. Yes, a good many of those I consider experts on housing feel that the taxing power can be used to better advantage than it is being used at the present time to stimulate home production.

Mr. SILVER. Yes, sir. In addition, I would emphasize that I am also speaking of real estate taxes within States and localities. I am suggesting that perhaps HUD might make grants to the State or the municipality to allow them to relieve the burden of real estate taxes on many people, even those not directly subsidized through Federal programs. People who may be earning income in the range of \$15,000 or \$18,000 and which in Stamford, Conn., is considered perhaps middle or moderate income. With the housing shortage that exists in my community, for example, these income groups do not need direct housing subsidies, but they would be greatly benefited by something that would relieve the burden of very high real estate taxes. Some grant to the municipality for people or families in this particular income bracket could help greatly.

The CHAIRMAN. You recommend that Congress encourage the formation and further activity of State corporations and that all direct Federal production subsidies be channeled through these corporations, and you also recommend loans that will be funded by bonds which will have blanket Federal guarantee. Now would it be your idea that those would be tax-exempt bonds?

Mr. SILVER. Yes; they would. It is my suggestion that the State development corporations be allowed to sell bonds which would be guaranteed by the U.S. Government. The interest rate on these bonds would thus be below market rate and the States could then loan money both under and over their interest costs. In other words, they would "skew" the interest rates charged. Where it was required to lend money at lower interest rates, they could do so, and where they could lend at higher

rates, they could do so, in order to break even. But in order for that to be successful I think they would have to get money cheaply and it would require some kind of Federal guarantees.

The CHAIRMAN. Excuse me just a minute. I have a call on the telephone.

[Brief recess.]

The CHAIRMAN. All right, sir, you may resume.

Mr. SILVER. Yes, sir. I think I concluded, Senator. I believe that we were discussing the sale of State bonds with Federal guarantees. We also were discussing the advantages of HUD grants to lower local real estate taxes.

The CHAIRMAN. Are you familiar with the bill that I introduced regarding this?

Mr. SILVER. Is this the community development bill that did not pass in the last Congress?

The CHAIRMAN. No. This is the housing bill, S. 2182. I will read from my bill:

The Secretary is authorized to make grants to any local housing agency or other State or local agency, the bonds which are guaranteed under this section in amounts estimated by him not to exceed $33\frac{1}{3}$ percent of the interest paid on such obligation.

Mr. SILVER. You have a similar idea, Mr. Chairman.

The CHAIRMAN. Is that in line——

Mr. SILVER. I was not aware of the specifics of your bill. We certainly are thinking along similar lines.

The CHAIRMAN. All right, sir. Anything further?

Mr. SILVER. Thank you very much.

[Complete statement of Mr. Silver follows:]

TO THE HOUSING SUB-COMMITTEE OF THE SENATE COMMITTEE ON BANKING,
CURRENCY AND URBAN AFFAIRS

My name is Irwin Silver. I reside at 140 Hoyt Street, Stamford,
Connecticut.

I would like to thank the Chairman and Senators for inviting me to
appear before them to read into the record and answer any questions
they may have regarding my statements concerning housing legislation.

My background which I have separately attached to my statement spans
the past 31 years of which 21 years were spent in the development and
construction of various diversified types of housing.

For the past eleven years I have been a vice president of F. D. Rich
Company's housing division as Vice President for Sales and Development.
The F. D. Rich Company has developed and constructed housing units for
various military services, non profit and limited dividend investors
in the federally subsidized housing programs from Alaska to the
Virgin Islands.

DRAFT OF TESTIMONY BY IRWIN SILVER TO THE
HOUSING SUB-COMMITTEE OF THE SENATE
COMMITTEE ON BANKING, CURRENCY AND URBAN
AFFAIRS

For almost 4 decades, the Federal Government has been deeply involved in the production of housing. That involvement is now under review, and these hearings by the Senate Housing Sub-Committee are perhaps the most important housing hearings since the 1930's. Unlike previous years, when the Congress has considered legislation to amend existing housing programs, and to initiate new forms of housing production subsidies, this Congress will review and reconsider the basic Federal commitment to housing as set forth in the Housing Act of 1968. After a review of the aims and goals of the 1968 legislation, Congress will chart a course and specify the means to implement such course. Accordingly, as I see it, Congress must consider the following general areas:

- I The need for housing in the United States.
- II The role of the Federal Government in meeting housing needs.
- III The means by which housing needs can be met through Federal Government activities.

In my remarks, I have brief statements on Items I and II and a detailed statement as to Item III.

In 1968, comprehensive investigations were conducted to determine housing needs. Congress at that time set forth a ten year goal with which we are all familiar. These goals were:

- I 26,000,000 new housing units
- II 2,600,000 new housing units annually

III Including 6,000,000 subsidized units or 600,000 annually.

Since that time the record for housing completions stands as follows as reported by the Department of Commerce Report C-22:

1969	1,436,400	
1970	1,452,100	
1971	1,740,200	
1972	<u>1,999,200</u>	
Total	6,627,900	
Goal	10,400,000	Shortfall 3,772,100

(Note these figures do not include mobile homes which were not included in the goals established by the 1968 act)

From these figures it is clearly apparent that we are far off meeting the goals set forth in 1968; however, in the interim period have there been any significant occurrences to modify these goals? While the production for the last several years has been increasing, in 1972 almost two million units - and in 1971 approximately 1 3/4 million units, there has been no evidence presented that there has been a net increase in the nation's housing stock or any evidence that the housing totals needed for the decade should be decreased. I suggest no hard data exists that would lead to a diminution of these totals. I suggest that budgetary and administrative difficulties are father to the wishful conclusions that the 1968 goals are no longer applicable to current conditions. Accordingly, I would hope this Congress would re-endorse the housing goals set forth in 1968 with due note of the record of accomplishment thus far and with a position as to what should be done to overcome the present enormous shortfall in production goals.

Presuming the existence of a housing need vital to the well being of the nation, I should like to comment on the need for and extent of the federal role in meeting this need. For some forty years now, there has been in each and every Congress a searching investigation as to the need

for the federal role in meeting the nation's housing requirements. While some Congresses have rendered a less than enthusiastic endorsement of such a role for Federal Government, each and every Congress has concluded the need for federal participation - and in 1968 it was concluded that massive participation was required especially in providing housing for lower income groups. Has the federal role been efficacious? The record speaks for itself in the area of housing for lower income groups.

Since the first legislation was enacted, federal housing programs have created hundreds of thousands of housing units: 2.6 million Americans living in over 750,000 federally supported low rent public housing units; 131,000 units completed under the Section 221 d3 BMIR program by June 30, 1974; and over 500,000 units under the Sections 235 and 236 programs between 1968 and 1972.

In all, approximately one (1) million directly subsidized housing units were created between 1935 and 1967 or an approximate average of 30,000 units per year. From 1968 through 1971, after Congress had determined that a massive effort was necessary, another 1.2 million units were developed in these four (4) years or 300,000 per year. The federal subsidy programs have thus been responsible for the construction of over two and one-half million housing units. These programs also may well have saved the housing construction industry during the difficult 1970-71 period. During those two years, when it was enormously difficult to obtain private capital for new residential construction, there were approximately 865,000 subsidized starts. In 1970, 30% of all starts received federal subsidies. It should also be noted that the FHA and VA programs led to a revolution in

home financing: 20, 30 and 40 year mortgage terms and low down payments. These, of course, are conditions of financing which now are customary throughout the housing and home finance field.

Considering the need and considering the record, there should be no doubt that the federal role has been vital to production of a broad spectrum of the housing needed to meet the nation's requirements for the past four (4) decades. It is not now apparent that there exists any other agency that can now supplant the role of the Federal Government. This Congress should re-endorse the need for a vigorous federal role in providing the means by which lower income Americans can be assured of decent shelter at affordable prices.

If this Congress re-endorses a vigorous federal role in meeting the nation's housing needs, legislation must be especially responsive to our lower income groups. This is the challenge - and this challenge reduces itself to very simple terms as follows: shelter expense should not exceed 25% of family income. This means a family with an income of \$6,000.00 per year can afford a rent of \$125.00 per month - a family with an income of \$12,000.00 per year - \$250.00 per month. Costs of developing and carrying housing exceed these affordable limits. Consider that a 7% - 40 year mortgage with a principle of \$25,000.00 has carrying charges of \$155.50 per month plus all other expenses incidental to housing which often bring the total monthly rent to \$300.00 and over. How do we close this gap?

Traditionally, Congress has attempted to close this gap by subsidies directed to housing production and operation - those subsidies, mainly in the form of lower financing costs for the development and carrying

of the project once completed. However, this Committee has been asked to consider shifting federal subsidies from direct production system to a form of housing allowance. In other words, this Committee is not merely considering the methods which are to be utilized to subsidize housing production. Rather you are reviewing the very premises on which the federal housing effort has been founded. To state the issue most directly, it is quite likely that the Administration, later this year, will recommend termination of direct federal support for the production of housing for low and moderate income families. Many have advocated, and this Administration apparently will recommend, shifting federal subsidies from direct production assistance to a form of housing allowances. Before the Congress considers this fundamental shift, it would be well for you to examine the existing subsidy programs and to evaluate their successes and failures.

Given the record of production achievement previously cited, one should be cautious, to say the least, before abandoning the federal direct subsidy programs. It is true that these programs have not eliminated poverty and segregation. They are expensive and there have been scandals. And many Americans oppose them as inefficient "give-away" programs for the poor. But these direct subsidy programs have produced over 2,000,000 housing units. They have increased the supply of housing and have been important elements in meeting the oft-stated national goal of providing a decent home and a suitable living environment for every American family.

If we are to shift from direct production subsidies to another form of federal housing assistance, we must be certain that the new programs will be as successful as the old ones in meeting the national housing goal. I contend that a housing allowance program alone, will

not be as successful as the direct production subsidies. Indeed, I believe this approach could lead to a monumental national failure far more damaging than the FHA scandals.

There is a place in a total national housing strategy for a program of income maintenance, whether that be housing allowances or, perhaps more appropriately, an adequate guaranteed annual income under the family assistance program. Certainly, an income maintenance program such as housing allowances, could effectively combat the social problem of inadequate income and poverty. Moreover, an income maintenance program would allow the poor to pay higher rents in public housing and to look elsewhere than in public housing projects for their shelter. A housing allowance might end the role of public housing projects as "housing of last resort" or as "warehouses" for the poor and the socially dislocated. Further, an adequate income floor could assure that every American family had sufficient resources to acquire a minimum level of housing, food, clothing and other necessities. It would importantly increase the purchasing power of low income families and provide them with a wider range of housing alternatives. However, it has not been demonstrated that a housing allowance or income approach alone, will increase the housing stock - and increasing the supply of housing remains our most important need. The facts do not allow us to be optimistic that increased purchasing power of, and increased demand by, housing consumers will lead to an acceleration of production of low, moderate and middle income housing.

In the Northeast, where I live and work, there is an inadequate supply of housing for middle income, as well as low and moderate income, persons. As a result, virtually all families at middle income or below are paying far more than the desired 25% of income for shelter. Often families are paying as much as 40 to 50% of income for housing. The poor and the old are often unable to find any housing that they can afford. The City of Stamford Conn. has a 0.3% vacancy rate, which is not unusual for cities in the Northeastern United States. These conditions will not be alleviated unless and until the housing stock has been dramatically increased and the production of housing accelerated. Will a housing allowance alone meet that need?

In metropolitan areas - the scarcity and high cost of land, the increasing costs of construction and of money, all have made it impossible to build market rate housing at rents and sales prices that middle income Americans, let alone the poor and near poor, can afford. Development costs are now at levels so high that the developers of multifamily projects, merely to break even, must charge rents which middle income families cannot afford. For example, in a medium size city such as Stamford, Connecticut, the owner-developer of an apartment project must now charge \$100.00 per month a room rent merely to break even on the project. I think it is obvious that merely increasing the financial resources of low and moderate income families through housing allowances or a similar income approach, will not necessarily lead to increased housing production. Presumably, a housing allowance or income maintenance approach would merely give those families the opportunity to operate in the market place as middle income families do now. And yet, as we know, not enough middle income housing is now

being built. Accordingly, I strongly recommend against the substitution of housing allowances for direct production. To do so, will invite disaster.

As a corollary to my recommendation against housing allowances, I emphatically endorse and recommend the continuation of direct production subsidies. Federal production subsidies aimed towards a continuing increase in the supply of housing for middle and moderate income families must be maintained and expanded as a critical element in the achievement of a reaffirmed national housing goal. As a precise goal, we must assure a sufficient rate of production of housing and an adequate stock of decent and affordable housing for working Americans, those with incomes from \$6,000.00 to \$12,000.00 per year. In many sections of the country, such as the Northeast, these families cannot find housing that they can afford. While they are occupying decent housing, they are spending much too high a proportion of their income on shelter. These families do not need programs of income maintenance, nor would they be eligible for housing allowances. Their incomes are adequate and the demand is sufficient, but the supply of housing remains inadequate.

At this point let us examine the areas in which direct production subsidies can be utilized to reduce consumer shelter costs. Production subsidies operate in two (2) general areas as follows:

- A. Reduction of development costs. Development costs can be reduced by lower financing costs during construction and by land acquisition write downs.
- B. Reduction of carrying charges after the project has been completed. This reduction results from low interest rates and

long amortization periods and from local real estate tax adjustments or abatements.

In the Housing Act of 1968, Sections 235 and 236 provided interest subsidies for permanent mortgages so that the owner, in the case of Section 235, or the tenant in the case of Section 236, paid only 1% interest charges plus amortization of the 40 year mortgage guaranteed by FHA. This is a deep and effective subsidy and has, on the whole, been a successful program; Sections 235 and 236, however, do not decrease any of the costs of development such as financing charges during construction nor do they provide for land acquisition write downs. Neither do Sections 235 and 236 help in decreasing real estate taxes when the residential units are completed and occupied. Accordingly, I would suggest that the present direct production subsidies as embodied in Sections 235 and 236 are too narrow and do only part of the job. Moreover, I further suggest that Sections 235 and 236 provide interest subsidies on an unnecessarily expensive basis. By processing loans through the private banking system and by basing interest subsidy payments upon market interest rates, the cost of development is materially increased by the "points" paid for to banks to take the construction and permanent loans and the annual federal interest subsidy is considerably larger than need be.

Accordingly, we should recognize that the Sections 235 and 236 program may be neither the most direct nor the most efficient manner to reduce those costs. Over the 40 year life of the Section 236 mortgages, the costs of housing production are enormously increased. Every time mortgage rates are increased, the costs of the program increase. The fact of the matter is that the Section 236 program was adopted as a way to minimize the budget impact in the early years of the program.

However, we now see that the program is a far more expensive way to produce housing than the old direct loan programs. The Federal Government is paying a premium, not to produce housing but to hide the budget impact of its housing programs. Housing should be dealt with as other national programs. Each year Congress should make a decision as to the amount of national resources which are to be devoted to housing production; housing should compete for the budget dollar, as any other need, and both Congress and the Executive Branch should be more open and honest in establishing the housing priority.

Many of the criticisms of the Section 235 and 236 programs, as well as of the low rent public housing program, are well taken. But those criticisms are reasons for reform and improvement in production programs, not a cause for elimination of direct production subsidies.

There are, of course, a range of alternatives which Congress might consider for more efficient production subsidies. In many states, we already have established state housing development and/or housing finance corporations. I recommend that Congress encourage the formation and further activity of such state corporations and that all federal direct production subsidies be channelled through these corporations. The purpose of these state corporations would be to make construction and permanent construction loans for housing responding to the public benefit. These loans would be funded by bonds which would have a blanket federal guarantee. This system would produce residential development money at much lower federal bond rates rather than at market interest rates with "points" and mortgage insurance premiums added on. Funding housing on this basis would materially reduce the cost of shelter for lower income groups.

In addition, the state corporations should be permitted to "skew"

loan rates; that is, these corporations would be permitted to make loans at rates lower than their breakeven rate for projects otherwise unfeasible and, of course, for easily feasible projects loan rates would be commensurately increased so that the average of a loan would be at or near the corporation's bond rate. Such flexibility on a broad scale would provide enormous acceleration to the production of housing for lower income groups. Such an arrangement would, in effect, cause the state corporation to act as a joint venturer with responsible developers.

In addition to the non-cash subsidy involved in the guarantee of state development corporation bonds, the Federal Government should make cash grants to these corporations for the purpose of land acquisition write downs and for real estate adjustments. Reductions of both these costs could have a material impact on ultimate shelter costs. Land acquisition grants, I believe, need little explanation. These grants would be used for acquiring property in high cost areas. HUD grants for urban renewal now provide some land for residential units at nominal acquisition costs. I would recommend that a structured program with direct grants to state development corporations should be established for housing site acquisitions.

Real estate tax adjustments are long overdue for rent paying residents. Often the stiffest opposition to housing subsidization arises from home owners who claim to carry the burden of taxes needed to fund these subsidies. This position, of course, is not valid; for, we all know that homeowners receive subsidization in the form of tax advantages flowing from homeowner deductions made for interest and real estate tax payments on owned property. The renter pays for interest and real estate taxes but receives no tax advantages. Moreover, on account

of the usual method of tax assessment, this burden falls most heavily upon lower income renters. The usual method of tax assessment is based upon an appraisal of the bricks and mortar value of a property and without regard to its income producing value. Since the appraised bricks and mortar value of new residential housing for all income groups usually varies relatively little, that portion of rent payments from lower income groups allocated to real estate tax is usually a much larger percentage of total rent payments than is the case for higher income rent payers. For instance, apartments in Stamford, Connecticut without tax adjustments are, regardless of tenant income status or rent rates, required to pay approximately \$50.00 per month per dwelling unit in real estate taxes. This means for the \$200.00 per month rent payer, 25% of rent is allocable to real estate taxes; for the \$400.00 per month rent payer, only 12½% is allocable to real estate taxes. Obviously, a more equitable taxing basis would be to assess gross shelter income for each property. To do so means a change and potential loss of real estate tax revenues to municipalities.

In order to induce municipalities to make equitable adjustments in tax assessments, a grant program, possibly shared with the states, should be established to partially reimburse the municipalities through state development corporations for loss of real estate tax revenue when such loss arises from housing activities authorized by the state development corporations. Accordingly, I recommend that direct grants to state development corporations be included in the housing act now under consideration.

Before concluding, a statement is appropriate regarding pending tax legislation. The emasculation of so called real estate tax shelters has been proposed as a tax reform measure. In the Tax Reform Act of 1969, accelerated depreciation was permitted for all new residential construction and certain residential rehabilitation projects. This provision was expressly designed for the socially beneficial purpose of increasing the nation's housing stock and it has operated as designed. We must recognize that there is competition for private capital, for the investment dollar, and it is unlikely that the return or the yield on investment in housing will ever be competitive with other forms of investment. The simple fact is that the production of housing and the supply of housing units will not respond to increased demand unless housing remains a competitively attractive investment. We will continue to need tax incentives along with maintenance of attractive and efficient forms of direct production subsidies. It now would be disastrous for the moderate and middle income housing market if Congress were now to eliminate the existing incentives. The real estate tax shelter has attracted private investment capital to housing production. On the basis of present costs of construction, it is not conceivable that housing developers would ever realize enough profit from such projects to maintain production without incentives. It is critical that the real estate tax shelter (and this includes both the accelerated depreciation and the attractive recapture rules) be maintained. From tax savings, private investors can realize sufficient yield from investment in housing as to assure their continued involvement. While these incentives have often been criticized as "tax loopholes", a more intelligent analysis would indicate that these provisions are among the most innovative and most important aspects of the federal housing effort and are the prime reason for the high rate of housing

production over the last several years.

In addition to the aim of attracting private investment to increase the pool of funds available for housing for lower income groups, private developers with an interest in maintaining and enhancing their investment are needed as managers of subsidized projects. Section 236 projects in default or in trouble socially are not generally those with private investment under the Limited Dividend programs - mostly they are those projects sponsored by non profit groups with no investment. I cannot too strongly state that we need experienced private development organizations for the successful management of subsidized projects. We can only get this by tax incentives. Therefore, I urge that the present tax incentive be maintained.

In conclusion, allow me to summarize my recommendations to this Sub Committee.

- I Reaffirm the need for housing;
- II Re-endorse the goals set forth in the Housing Act of 1968;
- III Reject substitution of housing allowances for direct production subsidies;
- IV Broaden direct production subsidies;
- V In broadening direct production subsidies, do so at less cost by:
 - A. Working through state housing development corporations;
 - B. Support sale of state housing development corporation bonds;
 - C. Make direct grants to state development corporations for purposes of land write downs and real estate tax adjustments.

The CHAIRMAN. Well, thank you very much.

Our next witness is Mr. George Schermer, representative of Americans for Democratic Action. Mr. Schermer, come around, sir. We are glad to have you.

STATEMENT OF GEORGE SCHERMER, AMERICANS FOR DEMOCRATIC ACTION

Mr. SCHERMER. Mr. Chairman, my name is George Schermer. I reside at 210 A Street NE., Washington, D.C. I am appearing today on behalf of Americans for Democratic Action, which has its national offices at 1424 16th Street NW., in Washington.

On behalf of the organization I am representing and on my own behalf I want to thank you for the opportunity to present our views concerning housing to your committee.

By way of explaining a little further who I am, I am the owner and operator of a consulting service on urban social problems operating under the firm name of George Schermer Associates. Of some relevance to the concerns of your committee, my firm conducted a study of public housing for the National Commission on Urban Problems that was chaired by former Senator Paul H. Douglas. That study was published under the title "More than shelter." We have conducted several other studies on low-income housing. Prior to establishing the consulting service 10 years ago, I had worked for many years in public housing management and as director of community relations agencies in Chicago, Detroit, and Philadelphia.

As documentary testimony today, we are submitting copies of the formal resolution on housing adopted by ADA at its annual convention in May 1973. I will not attempt to read that statement here. With your permission, I will speak very informally for just a few minutes on a couple of the principal issues.

It is 24 years since Congress adopted the policy of providing a decent home for every American family in a suitable living environment. That Housing Act of 1949, was then thought to provide a comprehensive program. The program represented a good start, but it fell far short of something that we would call comprehensive today.

One of the weaknesses of our national housing policy today, in my opinion, has been the tendency to allocate vast public resources to highways and new and dispersed development which made possible a kind of luxury living for the affluent 50 percent of our population, but it spelled disaster for our central cities and our lower income population. It has led to the destruction of our urban transportation systems. It has dispersed job opportunities and community facilities and stranded the less competitive, the elderly, the handicapped, the children and teenagers of families who were not affluent enough to drive their children about.

Our housing industry is vital enough to build all the houses we need, but its economics are geared only to the upper 50 percent of the population. Given our commitment to highways and automobiles and our general insistence upon dispersal on the one hand, and the construction of expensive high-rise inner city developments that are totally inhospitable to middle- and low-income families on the other, the programs for urban renewal and low-income housing we have had to date

were destined steadily to fall behind. I have not said that those programs failed. I simply say that they have been far short of the needs of our urban areas.

The present administration's only answer to these problems to date has been to declare the programs that we have to be failures and to impound the resources allocated to them.

Now some of these programs were not doing very well, and I happen to have been one of the severest critics of public housing as it operated in the earlier years because, in my opinion, it has been a serious mistake to colonize the poor in special compounds. But we must recognize that public housing subsidies have been the only mechanism ever developed in this country that provide weather-proof shelter and indoor plumbing for families in the lowest one-fifth of our population. We had begun in recent years to move away from those earlier programs toward acquisition of existing properties, leasing programs, turnkey rent supplements, and the like.

Now there has also been indeed exploitation of some of the other programs such as section 235. But we can and must learn from the mistakes we made instead of simply dumping and junking the experience that we have had to date.

I regret that I was asked to make this appearance before you so recently because the party who was intended to come here wasn't able to make it and I have not had adequate opportunity to analyze the legislation that you have before you, so I will speak only to a few of the general positions of ADA.

First of all, we take a strong position in favor of programs to assure that there will be a supply of housing for all ranges of income distributed through the metropolitan areas in relation to the jobs that are there. As I said earlier, we have dispersed our jobs and our community facilities so that they are generally accessible now only by automobile. We must do something to bring housing to where the jobs are because the jobs have been steadily moving away from our central cities and into the outlying suburban areas.

We have been hearing a good deal about proposals for housing allowances. We believe that housing allowances might work in a renter's market. We think that housing allowances will only result in pushing rents upward, making housing even more unavailable to low-income families if we begin to pump money for housing allowances into a scarce housing market.

We will support programs which will require a comprehensive mix of housing for all income levels to serve those who must find employment in the widely dispersed suburban locations. In other words, we strongly support the concept of a fair share distribution of housing for various income levels throughout the metropolitan communities. We think public subsidies are required to achieve that end.

We recognize that the categorical programs must be consolidated, that there have been a great many inadequacies in programs that we have had. We believe that localities should be given much more control in setting priorities and exercise a stronger hand in the administration of programs. But before we could endorse any block grants or any system of special revenue sharing for housing and urban programs we would want to be sure that there were very strong safeguards written into the legislation to guarantee the achievement of certain national

goals. Among those goals certainly would be complete guarantees that there would be freedom of choice of where to live guaranteed to people of every race and for people at all income levels.

One very important stopgap measure that must be taken immediately is to conserve and rehabilitate the existing stock of public housing. As inadequate as it has been in many respects, particularly from a social point of view, the only program we have had that really provided decent shelter for low-income families has been our public housing program.

The current policy in this country appears to be one of abandoning the existing public housing supply. Only a very substantial infusion of additional subsidies will preserve the housing stock that we have. We cannot afford at this point to let that housing go into decay when our supply is so short. We strongly urge that Congress take steps to make sure there is sufficient infusion of subsidies into the public housing program to at least maintain the supply that we have while we are in the process of looking for a new program.

The CHAIRMAN. Well, thank you very much. Are you familiar with the bill to which I referred a while ago that I introduced, S. 2182?

Mr. SCHERMER. I got the bills together just a couple of days ago, Senator, and I must confess that I have not yet——

The CHAIRMAN. I believe you will find a good many of the things you recommended are in that bill.

Mr. SCHERMER. I did notice that ; yes.

The CHAIRMAN. That bill, for instance, would authorize local housing authorities to broaden their activities by floating taxable bonds and constructing housing for low- and moderate-income families as well as the very low-income family. And it also provides for demonstration of what full tax payments on public housing could mean. I just recommend it to you for careful reading.

All right, thank you very much. We appreciate your assistance.

[Complete statement of Mr. Schermer follows:]

Statement of George Schermer
on behalf of
Americans for Democratic Action
before the
Senate Committee on Banking, Housing and Urban Affairs
July 30, 1973

Mr. Chairman and members of the committee, my name is George Schermer, residing at 210 A Street, N.E., Washington, D.C. I am appearing today on behalf of Americans for Democratic Action, which has its national offices at 1424 Sixteenth Street, N.W., Washington, D.C. Both the organization I am representing and I personally deeply appreciate the opportunity to present our views concerning housing to your committee.

I am the owner and operator of a consulting service on urban social problems operating under the firm name of George Schermer Associates. Of some relevance to the concerns of your committee, my firm conducted a study of public housing for the National Commission on Urban Problems that was chaired by former Senator Paul H. Douglas. That study was published under the title "More than Shelter." We have conducted several other studies on low-income housing. Prior to establishing the consulting service ten years ago, I had worked for many years in public housing management and as director of community relations agencies in Chicago, Detroit and Philadelphia.

As documentary testimony today, I am submitting copies of the formal resolution on housing adopted by ADA at its annual convention in May of 1973. This statement is too long to permit reading in the time allotted. With your permission, I should like to speak informally to just a few of the principal issues.

Americans for Democratic Action
1424 Sixteenth Street, N.W.
Washington, D.C. 20036

Adopted by National Convention
1973

STATEMENT ON HOUSING

Proposal: To make decent, safe and unsegregated housing an enforceable civil right.

ADA condemns the moratorium on federal housing assistance. We deplore the arbitrary shutting off of funds to support construction and rehabilitation of housing for low and moderate income families, of needed sewer and water facilities, and of other public and neighborhood facilities of all kinds.

More than two decades have passed since the national housing goal of "a decent home and suitable living environment for every American family" was enunciated. As a nation, we now are probably less adequately housed than in 1949. Three-fourths of all federal housing subsidies are in the form of income tax deductions, and most of these go to families with annual incomes above \$10,000. In contrast, programs for poor people--public housing and rent supplements--have been funded on a token basis and crippled by local approval requirements. Federal housing assistance programs, including VA and FHA mortgage insurance, have increased racial and economic segregation and the ills which attend it.

The Administration's freeze on subsidized housing programs compounds our problems, applying only to programs designed for low and moderate income families, not to tax subsidies or federal mortgage insurance. To accomplish our goals, major changes in housing programs and policies are required. These changes must include a massive increase in funding and a greater role for the federal government. Present problems consist largely of providing incentives to the private sector. Future programs must (1) revitalize direct public sector participation in the production, regulation, placement and management of housing, and (2) provide for increasingly stringent regulation of private sector activity. For those who

cannot afford it, adequate housing or subsidies must be provided. Our eventual goal should be a radical restructuring of the housing industry to encourage individual and community ownership. Our short-term goal must be a dramatic improvement in existing housing and housing development programs.

Eight major issues must be addressed:

(1) Equal Housing Opportunity

To make equality of housing opportunity a reality, ADA calls for eventual replacement of all current housing subsidy programs with a new program which would subsidize the difference between the amount families can afford to pay and the economic cost of the unit. No family or household should have to pay more than 25 percent of its income for shelter. This program should apply to both existing and new housing. The subsidies should be available to all families needing them and for all housing units except the most expensive 20 percent of the supply in the community.

(2) Money

ADA believes that shelter costs have become inflated, beyond all proportion, in comparison to other sectors of the economy. A much larger proportion of the public--certainly all in the upper two-thirds of the income range--should be able to find suitable shelter at a cost they can afford, without the necessity of public subsidy.

Various possibilities present themselves:

(a) restrictive zoning which unnecessarily increases the cost of housing should be outlawed.

(b) taxes upon residential real estate are equivalent to a sales tax of 25 to 30 percent on the value of the product; they should be replaced by more equitable forms of taxation.

(c) some form of taxation (similar to Henry George's single tax) upon increments in land values would discourage inflation.

At least two-thirds of the families in the United States today cannot afford new housing without direct housing subsidies. Regardless of the housing programs used, present funding levels are grossly inadequate. Housing subsidies now amount to less than one percent of the federal budget; at least a tenfold expansion is required.

The present practice of authorizing inadequate program funding, appropriating less and allocating minimal amounts on a political basis must be ended. All legitimate program applications which will help meet low and moderate income housing needs must be funded.

(3) Individual and Community Homeownership: Tenants' Rights

Everyone should have the opportunity to own or share in the ownership of his or her housing. Present homeownership programs must be expanded and implemented vigorously, and technical and additional financial support provided to the new owners. A new program must be developed to provide for speedy takeover of code-deficient and abandoned properties by community cooperative, non-profit or limited-profit organizations, followed by a rehabilitation grant-and-loan package.

Present federal income tax laws which permit landlords to deduct property taxes and depreciation should be amended so that tenants share in these benefits.

Tenants, including those in publicly assisted housing, must be guaranteed their right to organize and bargain collectively with housing management without interference, intimidation or retaliatory eviction, and to withhold rents when a landlord has substantially violated any express or implied condition of rental.

(4) Anti-discrimination

We deplore project selection criteria and other regulations which have the effect of penalizing ghetto and urban residents for the sins of their suburban neighbors by cutting off housing and community development programs. We urge use of the full powers available to the federal government to open all communities to subsidized housing without penalizing inner city and ghetto residents. We call on

the Department of Housing and Urban Development to implement the provisions of Title VII of the 1968 Civil Rights Act, through denial of HUD assistance-- sewer and water grants, section 701 planning funds, open space and renewal funds-- to communities which through land use policies or other devices exclude people on social, economic or racial grounds. We point to the fact that the freeze upon federal community development funds and housing subsidies has neutralized the principal federal leverage for implementing such policies. Compliance with federal civil rights laws must be a condition for receiving federal funds in any form. It is ADA's belief that corporations and industries relocating their facilities to suburban communities must bring to bear the full force of their economic power to press for the abolition of exclusionary housing and zoning policies. Poor and middle class workers must be allowed to follow their jobs to the suburbs.

(5) Development of New Housing; Conservation of Existing Housing

Greatly increased public sector participation in housing development is needed, with major emphasis on low and moderate income housing. Such housing should be consistent with local standards of housing excellence and scale and provide a variety of environments and amenities that will enhance the total community. Housing development capability which is effective and responsive to positive direction from federal, state and local authorities should be established in every area of the country, either through revitalization of local housing authorities by wholesale replacement of their members, or through the establishment of new devices such as urban development corporations or community development corporations. At least 20 percent of the dwelling units in all new housing developments should be rented or sold, with adequate subsidies, to low and moderate income families. The present requirement that all low income housing assistance, including leased housing and public housing, be authorized by both the local housing authority and the local government must be modified to allow the state or federal government to approve, and, if necessary, construct and operate a needed project, despite local

rejection. Subsidies to such housing should include funds to cover payment of local property taxes to municipalities which are making substantial efforts to meet low and moderate income housing needs.

Owners of rental housing should be required to deposit a predetermined amount of funds monthly into an escrow ~~repair~~ account, which would be used to maintain the development. If an adequate maintenance program is not forthcoming, then tenants should have access to these funds. Additionally, developers of sales housing should be required to deposit funds into an escrow account for a predetermined period to cover defects caused by improper construction methods. At the end of this period, the balance in the account would be returned to the developer.

Until adequate alternatives are enacted, programs to support the development of moderate income housing by the private sector should be continued at whatever level is needed, but administered with much more care, so that the interests of both tenants and the public sector are more adequately protected. The costs of good management, in particular, must be given recognition in the administration of the program and either management subsidies provided, or a greater proportion of rental income allowable for management costs. States should be provided with strong incentives to develop statewide performance building codes and legislation to overcome constraints such as restrictive zoning codes.

Rehabilitation programs should be focused on the salvaging of sound neighborhoods rather than sound buildings. All rehabilitation loans should be accompanied by a grant so that the final carrying costs of the building do not exceed the neighborhood resident's ability to pay. Funding guidelines currently based on the number of rooms should be made more flexible so that the basic amenities of large older houses and apartments are not lost.

Code enforcement programs must be utilized early in the course of deterioration and administered to save sound housing rather than to complete the abandonment process. Where abandonment is in process, community ownership institutions

must be ready to take over the ownership and responsibility for restoration of buildings. The penalties for code violations should be fully invoked against landlords who are milking properties in deteriorating neighborhoods. Where appropriate, their properties should be taken over for tax and penalty delinquency and turned over immediately to community-based organizations.

(6) Effective Rent Control

Virtually all urban low income families live in rental housing. While cooperative and community ownership are valid long term goals, people who pay rents need help now. Most cities have acute housing shortages, and rents are escalating sharply. State legislatures should enact legislation to enable local governments to adopt effective rent control with the federal government reserving standby power to act where lower levels of government fail to do so.

Increasing the housing purchasing power of the poor and powerless through housing allowance and rental assistance programs will provide a bonanza for the owners of poor people's housing unless the owners' ability to raise rents independent of increased services and amenities is rigidly constrained. ADA favors the application of housing allowances only in localities where the vacancy rate is high enough to preclude the forcing upward of rents.

(7) The Courts

Few local courts have kept up with changing laws governing housing. Landlords are still getting the benefit of the doubt in virtually every court to which a tenant has recourse. Housing courts should be established in all urban areas to hear all cases involving landlord-tenant relations and code enforcement. The legislation establishing such courts must include guarantees of adequate substantive and procedural rights, including legal assistance for housing occupants.

(8) Encouragement of State, Regional and Local Action

In some areas, substantial efforts to meet housing needs are underway. Some states have allocated large amounts of state revenues to housing assistance

programs. Some regions have made viable beginnings in the genuine metropolitanization of housing and community development implementation. Some housing authorities are undertaking vigorous programs of increased development and management improvement. But--with few exceptions--these programs are dependent on continued federal subsidies. Federal programs should be administered to support, enhance and encourage all such efforts, both to strengthen their effect and also to serve as an incentive to other areas to undertake similar efforts. However, we oppose turning federal housing funds over to states, unless the federal government continues to exercise both initiative and control to see that poor people's needs are met first, and that housing programs are carried out without discrimination against poor people, minorities, old people, families with children, families headed by women or others chronically not served by the present housing market. Particular attention should be paid to meeting the critical needs of rural areas, which contain only one-quarter of our population but two-thirds of all our substandard housing, and where incomes are so low that only two percent of all households can afford decent, unsubsidized new housing.

The CHAIRMAN. Next is Mr. Chester Sudbrack.

Mr. Sudbrack, we are very glad to have you, sir. Mr. Sudbrack is chairman of the realtors' Washington committee of the National Association of Realtors. He is accompanied by Mr. A. E. Abrahams, director of governmental affairs, and Steven Doehler, his special assistant.

STATEMENT OF CHESTER SUDBRACK, CHAIRMAN, REALTORS' WASHINGTON COMMITTEE, NATIONAL ASSOCIATION OF REALTORS, ACCOMPANIED BY A. E. ABRAHAMS, DIRECTOR, GOVERNMENT, AFFAIRS AND STEVEN DOEHLER, SPECIAL ASSISTANT

Mr. SUDBRACK. Yes; Senator, I have with me on my right Steven Doehler, special assistant to the director of governmental affairs, and to my left is Albert Abrahams, director of governmental affairs of the National Association of Realtors.

In the interest of time, sir, we have submitted our testimony to the committee, we would like to skip parts of it even though it is on the record (see p. 1532).

We appreciate this opportunity to give an overall view of our feelings on housing.

At this moment the most immediate question in the minds of everyone concerned with housing is the overall state of the economy. The members of the National Association of Realtors are naturally sensitive to the tight money situations which arise cyclically in the economy, most notably in recent years in 1966, and again in 1969 and 1970. These were hard times in the housing field, and no one wishes to contemplate a replay of them.

At the same time, however, we recognize that the pinch of tight money is something that must be borne by all of the economy in supporting a national effort to deal with the larger problem of rising prices. As stated recently by Governor Andrew Brimmer of the Federal Reserve Board.

* * * all of us should recognize that these consequences that is, shortage of credit— are inherent in the use of a restrictive monetary policy as a lending instrument against inflation.

Realtors, while affirming the importance of housing to the national welfare, are prepared to bear a fair share of the national welfare, are prepared to bear a fair share of the burden in bringing stability to the economic environment.

In this regard we believe that the recent credit tightening measures of monetary authorities have not yet been tested long enough to warrant a panic response from the housing industry. The July 5 increase in interest rates payable on savings deposits, particularly, requires observation over the next several months before it can be evaluated.

The action of the Federal Reserve Board in limiting the so-called "wild card" open-end interest rate on 4-year certificates of deposit is an example of the kind of attention that must be taken lest a recurrence of both an excessively tight money policy and other types of severe damage to the home industry be suffered once again. No one seeks a recurrence of the 1966 and 1969 housing squeezes. Vigilance and careful planning are required and new sensitivities to housing needs must be maintained if we are to avoid serious hardship for prospective home owners and the industry as a whole.

Meanwhile, the association is pursuing a cooperative approach with the Federal Reserve, the Council of Economic Advisers, the Federal Home Loan Bank Board, and the Department of Housing and Urban Development, in a searching effort to determine the point at which the spigot of total available credit can be reopened without undue rekindling of inflation. We will work constructively to assist the administration in planning an economic balance which permits the stable pursuit of our national housing objectives.

Having presented our association's view of the overall environment in which the housing sector must function for the present, I would like to turn now to a discussion of the more specific concerns of this subcommittee in its consideration of omnibus housing legislation for 1973.

Mr. Chairman, we have submitted this full report of our text of these proposals to the committee and we have also sent them to Secretary Lynn, so I would like to proceed with these proposals.

Our central proposal is for the Federal Government to test, through a major experiment, the desirability of replacing present programs of housing subsidy, welfare, food stamps, medical care, and other aid to the poor with a single, comprehensive assistance system. The new program would use a cash-and-certificate approach, providing individuals in need with a general income supplement, plus funds earmarked for basic need categories including housing allowances.

The program would be administered by a single agency geared toward handling the needs of people in lower economic brackets on an individual basis. We recommend that the entire system be handled through the Department of Health, Education, and Welfare, or perhaps ultimately through the proposed Department of Human Resources. The key principle is that all forms of direct Federal assistance to low-income people should be provided through a single administrative structure. This is necessary from the Government's standpoint in order to coordinate its efforts, to collect and utilize feedback, and to eliminate the wasting of resources through duplicated and conflicting efforts.

The concept of combining separate bureaucracies into a single system should be extended down to the level of the individual counselor dealing directly with the person or family in need of assistance. One counselor should provide advice on all of the kinds of aid the family receives: housing, food, health, job referral, or whatever. The counselor can take a unified look at the family's current and potential resources on the one hand and its needs on the other, and can assist them in making financial decisions.

The proposal reflects the belief of realtors that the key difficulty with the subsidized housing programs as originally constituted was that they focused on the production of housing almost to the exclusion of considering distribution factors. They seemed to take the narrow view that massive supply of a few types of lower-cost housing would automatically match up efficiently with the extremely complex composition of low-income housing needs. The emphasis on supply often overlooked hard questions of who received low-income housing assistance and who did not; of what kinds of housing was needed by these people; and of what kinds of housing could be absorbed by the communities.

Our proposal shifts this focus over to the demand side through the housing allowance approach. The allowance would permit the individual family to select the housing which meets its requirements. The demand generated would create an appropriate supply response through the efficient workings of the free market. It should also enable the Government to examine the detailed composition of subsidized housing demand and to key its program response to the specific characteristics of the need.

We believe that adoption of a program approach along these general lines would vastly improve our capacity to meet our national objectives for housing as well as the other needs of low-income people. We respectfully urge the subcommittee to give such an experiment its consideration.

I would like to turn now to the subject of unsubsidized housing.

We believe that unsubsidized housing should be provided to the greatest extent possible through the private market mechanism. When Government involvement is necessary, as it inevitably will be, we believe it should be handled wherever practicable through the local or State levels. In this regard, we strongly support the administration's proposal for a special revenue sharing approach to community development.

We have recommended that the subsidized programs be split away from FHA and placed in the Department of Health, Education, and Welfare. We believe that this action would improve not only the performance of the subsidy programs themselves but also the ability of FHA to deal with the problems of unsubsidized housing through the mortgage insurance programs. Realtors believe very strongly that the effort to involve FHA in the subsidy area has damaged its credibility and operating efficiency in a way which has carried over into the performance of its traditional insuring functions.

If the programs for low-income housing assistance are not shifted to HEW, as recommended, then we would strongly urge the Congress to consider placing housing subsidies in a separate office of the Department of Housing and Urban Development, totally freeing FHA to conduct the activities for which it was originally intended and in which it has been so successful.

Recognized as a significant element in housing costs is the cost of credit. A home is the largest single purchase made by most consumers, and is one that in almost all cases requires credit. We must support actions that will insure an improved flow of funds into the mortgage market concurrent with attempts to control inflation. A special priority must be given to the low- and moderate-income home buyer.

Perhaps the most significant recommendations that should be implemented almost immediately are to:

1. Free the interest rate on FHA and VA guaranteed mortgages;
2. Reform the burdensome State usury laws which act as an obstacle discouraging lenders from acquiring residential mortgages;
3. Maintain the institutional rate differential on savings until assurance is presented that changes in financial structure will act to improve the operations of the mortgage market.

We urge that this subcommittee, in developing a new housing bill or working on current legislation, consider and act on these recommendations as soon as practicable.

We would like now to review certain provisions of S. 2182, a bill to consolidate, simplify and improve the many complex housing programs which make up the Housing Act of 1973. Although we agree with many of the provisions of the bill, we have some criticism which may, hopefully, suggest some changes by the subcommittee.

Two provisions we strongly support are, first, the attempt at simplification which is similar to proposals adopted in the housing bill which passed the Senate in 1972; and, second, the requirement that HUD move to provide counseling assistance to home buyers. Both would offer essential improvement for the operation of housing programs.

Section 103 of the bill, which gives the authority for the so-called dual system of interest rates, should be rejected. Although we believe the complete freeing of rates on FHA and VA loans will solve many problems we do not think that the experimental system designed in the bill would be effective. The only time such a dual rate experiment could possibly be successful would be if a provision were included whereby the buyer and seller and any other party to the transaction could negotiate the payment of discount or points on an FHA or VA mortgage.

We also oppose section 704, which amends the language of section 518 of the National Housing Act dealing with the authority of the HUD Secretary to make expenditures to correct defects in housing insured through certain programs. This amendment approaches the issue of indemnity for defects in homes without understanding its full implications, including the costs to the government. It also seriously threatens the sound mortgage insurance system. To explain how a realtor in the field views this amendment, we have excerpted a portion of a letter recently received in our Washington office. This letter is included in our testimony, and also an article published in the July issue of "Real Estate Today" by the National Institute of Real Estate Brokers. This describes what realtors and private industry—in other words, the market mechanism—feel we can accomplish without a legislative directive and at no cost to the Government. The interaction of the public sector with the private market is crucial to the efficiency and success of the contribution by each.

S. 2182 and several other bills before the subcommittee for consideration contain many other provisions which we are currently reviewing and on which we plan to prepare and submit specific comments.

Another legislative topic which has recently received Senate consideration is the disclosure of closing costs incident to a real property transaction. On July 23, the Senate passed amendments to the Truth-in-Lending Act, including an amendment to require the disclosure of all real property closing costs prior to the actual consummation of the transaction. According to the committee report, disclosure of all closing costs payable by a consumer must be made by the creditor at the time he makes a loan commitment, or in the case of a cash transaction at the time of the downpayment.

During consideration of this legislation, the Senate rejected an amendment which would have required the Secretary of HUD to establish maximum closing cost charges. Realtors strongly supported this action based on the belief that the problem in this field is prin-

cipally one of disclosure and consumer understanding of the services performed and related costs.

Our position is that all parties involved in offering a service connected with a real estate transaction should attempt to clarify what are the proper settlement and closing costs, and what steps should be taken to insure they are equitable and economically feasible. Rather than expect the Secretary of HUD to estimate what are reasonable charges for necessary services involved in closings, the way to insure that costs are reasonable is to help the consumer understand all the costs and encourage the industry through business practices to disclose and explain all costs.

At this time we would like to comment on a bill recently introduced by Senator Brock, S. 2228, which would provide for greater disclosure of the nature and costs of real estate settlement services and eliminate the payment of kickbacks and unearned fees in connection with settlement services provided in federally related mortgage transactions. We believe the provisions of this bill would act as a considerable benefit to the consumer and would clear up much of the misunderstanding surrounding this issue.

Utilization of a uniform settlement statement in conjunction with an information booklet describing the statement and other important considerations involved in purchasing a home is an assurance that every homebuyer will be afforded the information he needs for proper decisionmaking. The bill specifically states that the settlement form "shall include all information and data required to be provided for such transactions under the Truth-in-Lending Act and the regulations issued thereunder by the Federal Reserve Board, and may be used in satisfaction of the disclosure requirements of that act, and shall also include provision for execution of the waiver allowed by section 104(c)." This provision is essential, since one of the major complaints realtors receive regarding TIL disclosure is the lack of coherence between the TIL statement and the settlement statement. The TIL statement often contains theoretical costs related to the financing, and is not given the priority at the time of closing that is given to the settlement form which contains all the actual dollar costs incurred by the buyer and seller. A valid real estate contract must be based on mutual understanding; therefore, a uniform settlement form can accomplish much more efficiently the objective of the TIL form, while reducing the inherent consumer confusion created by two forms.

When the original truth-in-lending bill was before the Senate committee, the Federal Reserve Board agreed with this point and recommended a total exemption of first mortgage lending on the ground that there is already reasonable disclosure for the consumer during transactions involving first mortgages. The text of the Board statement appears in appendix D.

In a real estate transaction involving first mortgages, the key is to improve consumer understanding before closing, rather than duplicating in a separate disclosure process at closing information already available to the homebuyer. There is a need for improvement in this area, as is pointed out again by the Federal Reserve Board, the agency experienced with and responsible for implementing the act. In recent testimony—appendix E—Gov. Jeffrey Bucher of the Federal Reserve

Board indicated that due to the complicated transaction involved in real estate closing, the current TIL disclosure of costs at the time of closing does not give the consumer an adequate opportunity to "use them to assess the terms of the transaction." He states further that the Board feels disclosure is eminently more meaningful if disclosure of settlement charges includes all closing costs. We feel the approach taken in Senator Brock's bill, S. 2228, will achieve these objectives.

Since transactions have become more complex over the years due to new mortgage instruments, Government programs, property descriptions, methods of financing, et cetera, we believe a uniform format is the proper approach. Additional advantages of uniformity would be that it would make advance disclosure easier for the lender or realtor and make differences in costs more apparent to the consumer, hopefully causing the buyer to request an explanation of certain costs. We are convinced that increased consumer awareness of costs should significantly improve the competitive aspects of the market for those services related to the real estate transaction. If the lack of competition can be cited by HUD studies to create market aberrations, then increased competition should improve the market and be in the home-buyer's favor.

A final comment on S. 2228 is that it would repeal section 701 of the Emergency Home Finance Act which directs the Secretary of HUD and the VA to prescribe standards governing the amount of settlement costs allowable in connection with the financing of housing assisted by FHA or VA. The bill correctly terminates any approach to reducing unreasonable settlement costs by direct Federal regulation, and its provisions would increase consumer understanding of costs and procedures as well as make apparent those business practices and relationships which need to be prohibited. Increasing competition in the market will lower costs through the market mechanism and eliminate the costs of the bureaucratic maze needed to control rates.

In our analysis and study of the entire housing cost issue, we believe an important way to improve competition is through increased consumer awareness as he makes his buying decision. Thank you very much.

The CHAIRMAN. Well, thank you very much. There are a few things I want to take up with you. I notice you recommend that we adopt a policy of the housing allowance.

Mr. SUDBRACK. Yes, sir.

The CHAIRMAN. That has been in the law since 1970.

Mr. ABRAHAM. Mr. Chairman, the proposal which we have submitted to Secretary Lynn at the request of the Department suggests a far more comprehensive family assistance program approach than has been recommended to date by the administration or considered by the Congress. And we felt that the demand subsidy approach which we support ought to combine medicaid, food stamps, housing supplements, as a major experimental effort by the Government to direct a new approach toward subsidies for the poor and the working poor. And we recognize, of course, what you say, and that HUD has indeed got housing allowance experiments going on now. We believe that one cannot consider anything approaching this floor under income—or an income maintenance program—without taking all the programs which

affect the poor and the working poor and putting them under one roof.

The CHAIRMAN. You would expand the present program then. We enacted the initial program 3 years ago and then last year we expanded it. Would you expand it still further?

Mr. ABRAHAMS. Yes, sir. We think that a major income maintenance experiment is in the interest of the poor and the working poor; yes, sir.

The CHAIRMAN. Now let me ask you about this—what do you call it—palace guard policy. I notice that costs \$165 a year. It is in your appendix C.

Mr. ABRAHAMS. Yes, sir.

The CHAIRMAN. The first question that comes to me, can a low-income family afford that policy? And by the way, reading from your paper, the appendix C, I note that the contract provides for complete maintenance, repair or replacement of major home equipment which fails due to normal wear and tear the first full year of occupancy. Now I don't see structural defects included in there. We have held some hearings out in Chicago in which we found structural defects that were just unbelievable. In fact some of them were horrible. And yet nobody was responsible. Not the real estate man that sold it. FHA didn't feel that it was responsible. The mortgagee felt no responsibility. There was no one the owner could turn to. That accounts for the Stevenson amendment in the bill that we passed just recently. Don't you think that there ought to be some responsibility on somebody to make good that type of defect?

Mr. ABRAHAMS. Mr. Chairman, if I might just respond we feel that the Stevenson amendment as has been adopted by the Senate in connection with the extension of FHA authority is an improvement over the provision which is in the omnibus bill. We are just concerned, Mr. Chairman, that there is a very real danger if the seller is ultimately required to pay for repairs through an escrow system, which is clearly provided for in the bill, to tie up his funds for 4 years; if this passes there will be a tendency to throw the baby out with the bath water. There will be a tendency, in our opinion, to discourage people from investing or from using the FHA mechanism in the very areas where you wish to utilize it. One can recognize the existence of a problem without suggesting that the answer lies in the potential destruction of FHA as an aid to lower and middle income families. It seemed to us that the provision simply goes too far.

The CHAIRMAN. Of course, I realize that some of these things are hard to work out. But let me go back to Chicago because that housing there is the worst I have ever seen. Now I cannot see how the person who sold that property, the person who accepted the mortgage on the property, and, of course, the FHA itself who insured the mortgage on the property—I can see no escape from every single one of those being answerable. And also the real estate man who sold it. Now I just think the ordinary rules of law ought to make every single one of those responsible. Yet not a single one of them was responsible.

And I don't know, this palace guard policy might be a good thing. I am sure it could be a good thing in a higher cost housing, and it might even be for the low-income housing. But I think it ought to include structural defects.

Mr. DOEHLER. Mr. Chairman, I think the approach of the palace guard is what we would like to emphasize. We are not really ready to say at this time whether realtors would recommend this experimental program as something that should be developed in legislation. I think it is an approach demonstrating how private industry has actually gotten involved. It is an example that when there are problems, such as some home defects, the market mechanism comes up with what it needs to correct the problem without Government involvement.

Now when it comes to structural defects in the house, and especially some of the major structural defects, it is a question that we believe along with everyone else should be addressed and——

The CHAIRMAN. Should be what?

Mr. DOEHLER. Addressed. It should be looked into and it should be thoroughly investigated. Realtors should point out major defects to buyers and I believe that when the inspection is made and the FHA looks at a house they should certainly protect the home buyer in a situation where there are major defects. I think, however, in the 203 program for example—if a buyer has been in the home for 4 years and now he is contemplating selling that home, I think there also should be protection for the seller. The equity built up in a 203 program over 4 or 5 years would be rather minimal, and it is not right that this be put in jeopardy. I think there should be a proper balance taken so the seller is at least looked at in the 203 program. We question, or at least we would like to examine whether this would be the case with the Stevenson amendment approach. Any amendment of section 518 should at least be completely investigated.

As for the low-income buyer affording this palace guard protection, in some cases the costs have been assumed by realtors and the market mechanism to increase the competitive aspects of selling these homes. It is a very novel program, but I think hopefully private industry could get more involved in this area and expand palace guard type programs into structural defects as well.

The CHAIRMAN. Well, thank you. Let me call on Senator Williams.

Senator WILLIAMS. Thank you, Mr. Chairman. I came in late, so I haven't digested the full statement. But on the last point you mentioned, the FHA inspections, isn't this a critical area, which has evidently not been recognized as an opportunity to discover housing defects?

Mr. DOEHLER. That is correct.

Senator WILLIAMS. It would seem to me that in Chicago someone wasn't doing his job, of looking at this property and passing on it.

The CHAIRMAN. If there had been an honest inspection and an honest appraisal then that could not have been overlooked. There were things there you just couldn't overlook. If the outside wall doesn't make connection with the studs, or whatever it is comes down from the roof, you couldn't miss that. If the toilet discharges into the bathtub that couldn't be overlooked. Oh, I could go on. I will just repeat by saying it is unbelievable. I'm sorry you weren't out there, Senator Williams.

Senator WILLIAMS. I think that this is not unique to Chicago, however. I believe this failure is nationwide. FHA inspections are not what they should be.

This was old housing that you are talking about?

The CHAIRMAN. Yes, existing housing.

Senator WILLIAMS. It is also true in new housing.

The CHAIRMAN. Yes, I know. I think that is true. And I have often said this—one of the greatest hardships Secretary Romney had to go up against was the incompetence, insufficiency, and in some cases the dishonesty of people who had been employed by the Department to carry out these jobs, and they just failed to do it. And, of course, I would like to say that fortunately a good many of them were caught and indicted and are awaiting trial now in different parts of the country.

Senator WILLIAMS. It would seem to me that we are moving toward some kind of insurance program for this problem. But before we reach that point certainly the screws ought to be put on at FHA. It would seem to me, so that honest, fair inspections could, and should be made.

The CHAIRMAN. That is my feeling.

Mr. ABRAHAMS. It might be worth noting for the record that one of the things that HUD criticizes in its interpretation, its evaluation of the Stevenson bill, is that it would fundamentally change what is now basically an appraisal rather than a building inspection—that is their view of it, in any event, and that there is a difference between attempting to arrive at the FHA appraisal value concept, which is what is presently involved, and shifting that load over to responsibility for an actual building inspection. In the view of HUD these are two different things, and that there will have to be a whole new system set up in order to carry out this particular warranty provision.

I am not simply criticizing that. I am just making the distinction which they have made.

The CHAIRMAN. Well, thank you very much, gentlemen. We appreciate your presentation.

[Complete statement of Mr. Sudbrack follows:]

Statement of Chester C. Sudbrack, Jr., Chairman, Realtors'® Legislative
Committee of the NATIONAL ASSOCIATION OF REALTORS® - before the
Subcommittee on Housing, Senate Banking, Housing and Urban Affairs
Committee, on pending housing and community development legislation
July 30, 1973

Mr. Chairman and members of the Subcommittee, I appreciate this opportunity to appear on behalf of the National Association of REALTORS® to discuss pending housing legislation.

First, by way of background, I am chairman of the Legislative Committee of the Association (formerly the National Association of Real Estate Boards). The Association is made up of more than 1,700 local boards of Realtors located in every state of the Union, the District of Columbia, and Puerto Rico, with a combined membership of approximately 500,000 persons actively engaged in sales, brokerage, management and appraisal of residential, commercial, industrial and farm real estate. The activities of our membership involve all aspects of the real estate industry, such as mortgage banking, home building, and commercial real estate development. We have the largest membership of any association in the United States concerned with all facets of the real estate industry.

At this moment the most immediate question in the minds of everyone concerned with housing is the overall state of the economy. The members of the National Association of Realtors are naturally sensitive to the tight money situations which arise cyclically in the economy, most notably in recent years in 1966, and again in 1969 and 1970. These were hard times in the housing field, and no one wishes to contemplate a replay of them.

At the same time, however, we recognize that the pinch of tight money is something that must be borne by all of the economy in supporting a national effort to deal with the larger problem of rising prices. As stated recently by Governor Andrew Brimmer of the Federal Reserve Board, "...all of us should recognize that these consequences [i.e., shortage of credit] are inherent in the use of a restrictive monetary policy as a leading instrument in the fight against inflation." Realtors,

while affirming the importance of housing to the national welfare, are prepared to bear a fair share of the burden in bringing stability to the economic environment.

In this regard we believe that the recent credit tightening measures of monetary authorities have not yet been tested long enough to warrant a panic response from the housing industry. The July 5 increase in interest rates payable on savings deposits, particularly, requires observation over the next several months before it can be evaluated. We shall reserve our analysis of the impact of these policies until we can make a more informed judgment.

Meanwhile, the Association is pursuing a cooperative approach with the Federal Reserve, the Council of Economic Advisors, the Federal Home Loan Bank Board, and the Department of Housing and Urban Development, in a searching effort to determine the point at which the spigot of total available credit can be reopened without undue rekindling of inflation. We will work constructively to assist the Administration in planning an economic balance which permits the stable pursuit of our national housing objectives.

Having presented our Association's view of the overall environment in which the housing sector must function for the present, I would like to turn now to a discussion of the more specific concerns of this Subcommittee in its consideration of omnibus housing legislation for 1973.

The issue which has probably generated the most concern over the past year in the housing area is subsidized housing programs. As the Subcommittee is well aware, the Department of Housing and Urban Development expects to announce its recommendations for a comprehensive approach to this area in early September. While we would like to reserve a detailed statement of our own recommendations until we have had an opportunity to review the HUD report, we do want to offer at this time a brief description of our proposal for a new approach to meeting subsidized housing needs in conjunction with other needs of low income people. The statement that follows summarizes a study which we submitted to HUD Secretary James T. Lynn last spring in response to a request for industry comment on federal housing policy. The full report is attached as an appendix to this statement (APPENDIX A).

Our central proposal is for the federal government to test, through a major experiment, the desirability of replacing present programs of housing subsidy, welfare, food stamps, medical care, and other aid to the poor with a single, comprehensive assistance system. The new program would use a cash-and-certificate approach, providing individuals in need with a general income supplement, plus funds earmarked for basic need categories including housing allowances.

The program would be administered by a single agency geared toward handling the needs of people in lower economic brackets on an individual basis. We recommend that the entire system be handled through the Department of Health, Education and Welfare, or perhaps ultimately through the proposed Department of Human Resources. The key principle is that all forms of direct federal assistance to low-income people should be provided through a single administrative structure. This is necessary from the governments standpoint in order to coordinate its efforts, to collect and utilize feedback, and to eliminate the wasting of resources through duplicated and conflicting efforts.

The concept of combining separate bureaucracies into a single system should be extended down to the level of the individual counselor dealing directly with the person or family in need of assistance. One counselor should provide advice on all of the kinds of aid the family receives - housing food, health, job referral, or whatever. The counselor can take a unified look at the family's current and potential resources on the one hand and its needs on the other, and can assist them in making financial decisions.

The proposal reflects the belief of Realtors that the key difficulty with the subsidized housing programs as originally constituted was that they focused on the production of housing almost to the exclusion of considering distribution factors. They seemed to take the narrow view that massive supply of a few types of lower-cost housing would automatically match up efficiently with the extremely complex composition of low-income housing needs. The emphasis on supply often overlooked hard questions of who received low-income housing assistance and who did not; of what kinds of

housing was needed by these people; and of what kinds of housing could be absorbed by the communities.

Our proposal shifts this focus over to the demand side through the housing allowance approach. The allowance would permit the individual family to select the housing which meets its requirements. The demand generated would create an appropriate supply response through the efficient workings of the free market. It should also enable the government to examine the detailed composition of subsidized housing demand and to key its program response to the specific characteristics of the need.

As I stated at the outset, the program should be thoroughly tested on an experimental basis before any large-scale implementation is undertaken. Various approaches should be examined, with particular emphasis on strengthening the counseling function and on streamlining bureaucratic structure and procedure.

We believe that adoption of a program approach along these general lines would vastly improve our capacity to meet our national objectives for housing as well as the other needs of low-income people. We respectfully urge the Subcommittee to give such an experiment its consideration.

I would like to turn now to the subject of unsubsidized housing.

We believe that unsubsidized housing should be provided to the greatest extent possible through the private market mechanism. When government involvement is necessary, as it inevitably will be, we believe it should be handled wherever practicable through the local or state levels. In this regard, we strongly support the Administration's proposal for a special revenue sharing approach to community development.

We have recommended that the subsidized programs be split away from FHA and placed in the Department of Health, Education, and Welfare. We believe that this action would improve not only the performance of the subsidy programs themselves but also the ability of FHA to deal with the problems of unsubsidized housing through the mortgage insurance programs. Realtors believe very strongly that the effort to involve FHA in the subsidy area has damaged its credibility and operating efficiency in a way which has carried over into the performance of its traditional insuring functions.

If the programs for low-income housing assistance are not shifted to HEW, as recommended, then we would strongly urge the Congress to consider placing housing subsidies in a separate office of the Department of Housing and Urban Development, totally freeing FHA to conduct the activities for which it was originally intended and in which it has been so successful.

An important issue we would like to comment on during these hearings relates to the question of escalating housing costs. The Bureau of Labor Statistics indicates that today the cost of home ownership is number two in the cost race, leading every major consumer expense category except the cost of services. The cost of home ownership includes purchase price, mortgage interest, maintenance and property taxes, and can reach a point where it can threaten the ability of the average family to own their housing. We won't recite all the social benefits of home ownership but ask that you remember they are many. Both an essential fabric of our society and the life of the real estate industry are in jeopardy when home ownership is threatened.

Recognized as a significant element in housing costs is the cost of credit. A home is the largest single purchase made by most consumers, and is one that in almost all cases requires credit. In our policy statement we indicate that efficient performance in economic policy management on the part of the federal government is paramount to an "environment that fosters an ample supply of mortgage money at interest rates which bring the cost of home ownership within the financial reach of potential home buyers." We must support actions that will insure an improved flow of funds into the mortgage market concurrent with attempts to control inflation. A special priority must be given to the low and moderate income home buyer.

Perhaps the most significant recommendations that should be implemented almost immediately are to:

- free the interest rate on FHA and VA guaranteed mortgages;
- reform the burdensome state usury laws which act as an obstacle discouraging lenders from acquiring residential mortgages;
- maintain the institutional rate differential on savings until assurance is presented that changes in financial structure will act to improve the operations of the mortgage market.

We urge that this Subcommittee, in developing a new housing bill or working on current legislation, consider and act on these recommendations as soon as practicable.

We would like now to review certain provisions of S. 2182, a bill to consolidate, simplify and improve the many complex housing programs which make up the Housing Act of 1973. Although we agree with many of the provisions of the bill, we have some criticism which may, hopefully, suggest some changes by the Subcommittee.

Two provisions we strongly support are, first, the attempt at simplification which is similar to proposals adopted in the housing bill which passed the Senate in 1972; and, second, the requirement that HUD move to provide counseling assistance to home buyers. Both would offer essential improvement for the operation of housing programs.

Section 103 of the bill, which gives the authority for the so-called dual system of interest rates, should be rejected. Although we believe the complete freeing of rates on FHA and VA loans will solve many problems we do not think that the experimental system designed in the bill would be effective. The only time such a dual rate experiment could possibly be successful would be if a provision were included whereby the buyer and seller and any other party to the transaction could negotiate the payment of discount or points on an FHA or VA mortgage.

We also oppose Section 704, which amends the language of Section 518 of the National Housing Act dealing with the authority of the HUD Secretary to make expenditures to correct defects in housing insured through certain programs. This amendment approaches the issue of indemnity for defects in homes without understanding its full implications, including the costs to the government. It also seriously threatens the sound mortgage insurance system. To explain how a Realtor in the field views this amendment, we have excerpted a portion of a letter recently received in our Washington office. This letter (APPENDIX B) and an article published in the July issue of REAL ESTATE TODAY® by the National Institute of Real Estate Brokers (APPENDIX C) describe what Realtors and private industry -- in other words, the

market mechanism -- can accomplish without a legislative directive and at no cost to the government. The interaction of the public sector with the private market is crucial to the efficiency and success of the contribution made by each.

S. 2182 and several other bills before the Subcommittee for consideration contain many other provisions which we are currently reviewing and on which we plan to prepare and submit specific comments.

Another legislative topic which has recently received Senate consideration is the disclosure of closing costs incident to a real property transaction. On July 23, the Senate passed amendments to the Truth-in-Lending Act, including an amendment (Sec. 209) to require the disclosure of all real property closing costs prior to the actual consummation of the transaction. According to the Committee Report, disclosure of all closing costs payable by a consumer must be made by the creditor at the time he makes a loan commitment or in the case of a cash transaction at the time of the downpayment.

During consideration of this legislation the Senate rejected an amendment which would have required the Secretary of HUD to establish maximum closing cost charges. Realtors strongly supported this action based on the belief that the problem in this field is principally one of disclosure and consumer understanding of the services performed and related costs.

Our position is that all parties involved in offering a service connected with a real estate transaction should attempt to clarify what are the proper settlement and closing costs and what steps should be taken to insure they are equitable and economically feasible. Rather than expect the Secretary of HUD to estimate what are reasonable charges for necessary services involved in closings, the way to insure that costs are reasonable is to help the consumer understand all the costs and encourage the industry through business practices to disclose and explain all costs.

At this time we would like to comment on a bill recently introduced by Senator Brock, S. 2228, which would provide for greater disclosure of the nature and costs of real estate settlement services and eliminate the payment of kickbacks and unearned fees in connection with settlement services provided in federally-related mortgage transactions. We believe the provisions of this bill would act as a considerable benefit to the consumer and would clear up much of the misunderstanding surrounding this issue.

On introducing S. 2228, Senator Brock summarized its four major provisions:

"First, it establishes a national uniform statement of settlement costs, which would become the standard real estate settlement form for virtually all home purchases in the United States.

"Second, it directs the Secretary of HUD to prepare and distribute special information booklets to help persons borrowing money to finance a home better understand the nature and costs of real estate settlement services. Included in the booklet will be an explanation of the uniform statement of settlement costs. HUD will distribute the booklets to lending institutions, who are required by the bill to present one to each mortgage applicant at the time of application.

"Third, it requires lenders to provide borrowers -- and to the government in the case of a governmentally assisted loan -- the full cost of settlement at least 10 days prior to the settlement date. Utilizing the uniform statement of settlement costs, the lender must provide the borrower an itemized disclosure of each charge arising in connection with the settlement. The lender is specifically charged with responsibility for obtaining any charges which may originate from other sources, and to include these charges in the disclosure. Thus the borrower will know his complete settlement cost, including attorney's fees, taxes, various insurance provisions, credit investigations, title searches, appraisal fees, and the like.

"Fourth, it protects the home buyer from having to pay kickbacks and other unearned fees by flatly prohibiting such activities and providing stiff penalties for violation."

Utilization of a uniform settlement statement in conjunction with an information booklet describing the statement and other important considerations involved in purchasing a home is an assurance that every home buyer will be afforded the information he needs for proper decision making. The bill specifically states that the settlement form "shall include all information and data required to be provided for such transactions under the Truth-in-Lending Act and the regulations issued thereunder by the Federal Reserve Board, and may be used in satisfaction of the disclosure requirements of that Act, and shall also include provision for execution of the

waiver allowed by Section 104(c)." This provision is essential since one of the major complaints Realtors receive regarding TIL disclosure is the lack of coherence between the TIL statement and the settlement statement. The TIL statement often contains theoretical costs related to the financing, and is not given the priority at the time of closing that is given to the settlement form which contains all the actual dollar costs incurred by the buyer and seller. A valid real estate contract must be based on mutual understanding; therefore a uniform settlement form can accomplish much more efficiently the objective of the TIL form, while reducing the inherent consumer confusion created by two forms.

When the original Truth-in-Lending bill was before the Senate Committee, the Federal Reserve Board agreed with this point and recommended a total exemption of first mortgage lending on the ground that there is already reasonable disclosure for the consumer during transactions involving first mortgages. The text of the Board statement appears in APPENDIX D.

In a real estate transaction involving first mortgages the key is to improve consumer understanding before closing, rather than duplicating in a separate disclosure process at closing information already available to the home buyer. There is a need for improvement in this area, as is pointed out again by the Federal Reserve Board, the agency experienced with and responsible for implementing the Act. In recent testimony (APPENDIX E) Governor Jeffrey Bucher of the Federal Reserve Board indicated that due to the complicated transaction involved in real estate closing, the current TIL disclosure of costs at the time of closing does not give the consumer an adequate opportunity to "use them to assess the terms of the transaction." He states further that the Board feels disclosure is eminently more meaningful if disclosure of settlement charges includes all closing costs. We feel the approach taken in Senator Brock's bill, S. 2228, will achieve these objectives.

Since transactions have become more complex over the years due to new mortgage instruments, government programs, property descriptions, methods of financing, etc.,

we believe a uniform format is the proper approach. Additional advantages of uniformity would be that it would make advance disclosure easier for the lender or Realtor and make differences in costs more apparent to the consumer, hopefully causing the buyer to request an explanation of certain costs. We are convinced that increased consumer awareness of costs should significantly improve the competitive aspects of the market for those services related to the real estate transaction. If the lack of competition can be cited by HUD studies to create market aberrations, then increased competition should improve the market and be in the home buyer's favor.

A final comment on S. 2228 is that it would repeal Section 701 of the Emergency Home Finance Act which directs the Secretary of HUD and the VA to prescribe standards governing the amount of settlement costs allowable in connection with the financing of housing assisted by FHA or VA. The bill correctly terminates any approach to reducing unreasonable settlement costs by direct federal regulation, and its provisions would increase consumer understanding of costs and procedures as well as make apparent those business practices and relationships which need to be prohibited. Increasing competition in the market will lower costs through the market mechanism and eliminate the costs of the bureaucratic maze needed to control rates.

In our analysis and study of the entire housing cost issue we believe an important way to improve competition is through increased consumer awareness as he makes his buying decision.

APPENDIX A



NATIONAL ASSOCIATION OF REAL ESTATE BOARDS

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June 22, 1973

Honorable James T. Lynn, Secretary
Department of Housing and Urban Development
451 - 7th Street, S.W.
Washington, D.C. 20410

Dear Mr. Secretary:

Great steps can be taken in housing reform if the federal government and industry will each contribute its unique resources to meeting the appropriate aspects of the problem. The attached report, while consistent with the NATIONAL ASSOCIATION OF REALTORS'® long-standing support for a strong industry role in housing, reflects our growing recognition of the need for new approaches and new ideas to meet our nation's housing requirements, and particularly for dealing with the problems of subsidized housing.

In the subsidy area we believe that the challenge is largely beyond the capacity of the private market to meet, even with the kind of government assistance attempted under the suspended programs. We are, therefore, recommending a totally new approach - one which not only would replace current programs for housing subsidy, but which would move them, in considerable part, out of HUD and into HEW. We hope that you will find the report of value in this area.

We are also offering for your consideration a number of recommendations for improving the federal role in non-subsidized housing, through HUD leadership and coordination of private industry effort.

The study is organized in two parts. Part I summarizes REALTORS' overall views on policy issues and sets forth our basic recommendations; Part II contains comments and recommendations of hundreds of REALTORS and state associations and local boards of REALTORS pertaining to structural and administrative change. This approach provides a broad view of the policy and program changes which we feel would effectuate the appropriate role of government in housing.

Sincerely,

J. D. Sawyer
J. D. Sawyer

Headquarters: 155 East Superior Street, Chicago, Illinois 60611 (312) 644-9700

Realtor®—a professional in real estate who subscribes to a strict Code of Ethics as a member of the local and state boards and of the National Association of Real Estate Boards.

PART I - HOUSING PROGRAM STUDY

This part summarizes the Association's view of the problems raised by Secretary Lynn's request, and responds to those problems with recommendations we urge for your consideration.

INTRODUCTION

REALTORS® across the country have contributed to this study through individual reports and through meetings of their local and state board organizations. Many boards held special meetings and responded to this study with thoughtful analysis based on their experience with housing programs in their own communities. This paper attempts to present a consensus view for the Association - but cannot be considered encyclopedic. REALTORS are located in communities with differing market conditions, local laws, and industry practices, so that occasionally contrasting views were expressed on individual programs or procedures.

The NATIONAL ASSOCIATION OF REALTORS is made up of more than 1,700 local Boards of REALTORS located in every State of the Union, the District of Columbia, and Puerto Rico. The combined membership of these boards is approximately 500,000 persons actively engaged in sales, brokerage, management and appraisal of residential, commercial, industrial, and farm real estate. The activities of our membership involve all aspects of the real estate industry, including mortgage banking, home building, and commercial real estate development. The NATIONAL ASSOCIATION OF REALTORS has the largest membership of any association in the United States concerned with all facets of the real estate industry.

ROLE OF GOVERNMENT IN HOUSING AND HOUSING FINANCE

Government has historically played a major role in housing. In the United States this involvement was centered primarily at the state and local levels until the 1930's, when the federal government responded to the emergency housing problems of the depression. Washington has since then maintained a

growing but still largely undefined sphere of interest in the housing field.

In attempting now to define the appropriate federal role in this area, we believe that the key consideration should be recognition of the complementary roles of local and state governments and of private industry. Stated succinctly, we believe that government should do nothing in this area which private industry can do better; that the states should do nothing which can be handled by the localities; and that the federal government should do nothing better dealt with by state, local, or private effort. In other words, federal programs should not displace other housing activities, but should rather supplement them, bridging the gap between them and national housing goals. If each of these tiers of participants in the housing process can be allowed to satiate its natural area of activity before a higher level interferes, we could minimize overlap and maximize structural efficiency. We should be able to limit government spending at all levels, and reduce the waste and resource misallocations which occur when decision-making is too far removed from the problem.

Despite the philosophical simplicity of this approach, it is, of course, extremely difficult to determine which actual housing needs should be matched with which private or public participant in the process. The lines cannot be clearly drawn. For example, federal interdiction is necessary where local priorities are harmful to housing, such as no-growth, restrictive zoning, and social or economic discrimination. Federal supplementation may be required in the development of community infrastructures such as roads, water, and sewer facilities, and police protection. It may be necessary in dealing with issues of wide-area impact. There is certainly a major role for federal agencies in research, data handling, and in providing leadership to industry, local officials, and the public.

This section of the report is divided into two parts corresponding to the two general areas of housing requirements which we believe fall partly or wholly beyond the capacities of private industry and local and state governments to resolve. The first relates to the majority of Americans who can secure adequate housing through the private market, but whose needs might be better met through federal efforts to improve the financing, production, or distribution of housing.

The second section concerns the needs of those Americans who cannot meet their own housing requirements and must have programs of government subsidy.

The paper will examine the problems in each of these areas of concern and, particularly in the latter, will attempt to offer a comprehensive new design for meeting our national housing objectives.

HOUSING THE NON-SUBSIDIZED

A. Housing Finance and Mortgage Insurance

Probably the most crucial factor affecting the availability of housing in the private market is the abundance or scarcity of money. The importance of this point is amply demonstrated by current conditions, in which many areas of the country are suffering rapid and severe reductions in their sources of housing funds.

Shortages of this kind do damage to major labor and industrial sectors, and, most important, set us back in our efforts to reach national housing needs. It should be borne in mind that when mortgage funds dry up, the first people eliminated from the market are those with lower incomes or higher risk characteristics. When this group cannot be absorbed by a healthy private market, their needs fall to the responsibility of government, where they are too often met less effectively, at higher cost. Overall, we believe that the federal responsibility

for maintaining a strong, broadly based mortgage finance market is its most important role in housing the non-subsidized.

This responsibility has two major aspects. First, the government must insure that a stable and increasing supply of funds is available for housing loans. Second, government should broaden and reinforce the capacity of the private market by providing insurance of the kind traditionally furnished by FHA. To this end, FHA programs should be brought into closer alignment with the actual workings of the housing market.

Recommendations

1) REALTORS would support a review of housing finance by all existing governmental financial and secondary mortgage market institutions. The secondary market and other measures should be developed as fully as possible to cushion housing against the adverse impacts of economic cycles.

2) Section 203 should be altered to free the interest rate on FHA loans so that market forces can function. We also recommend that lower downpayments and longer specified amortization periods be encouraged by changes in the 203 program.

3) REALTORS believe that the three most serious difficulties in utilizing FHA financing are poor appraisals, long processing time, and excessive costs, especially discounts. These problems should receive high priority attention.

4) FHA should be returned to its original role. If housing subsidies continue as part of the overall responsibility of HUD, then FHA should be split away from such responsibilities, possibly as a separate agency. If FHA's subsidy programs are abandoned at the conclusion of the current HUD study (a course of action which this report later recommends), then FHA can and probably should remain as a part of HUD.

We take this position because of the demonstrated failure of the attempt to make FHA's approach to housing needs stretch into areas where it is unsuitable. The purpose of the 203 program in the 1934 Housing Act was to increase

homeownership by making FHA mortgage insurance available with a low down-payment and longer amortization. The program was designed to broaden the private market risk acceptance in residential loans, but was to be financially self-supporting, insuring only "economically sound" mortgages.

Housing legislation in 1968 supplemented this criterion of "economic soundness" with that of "acceptable risk" -- mortgages which were not expected to be good investments from an economic standpoint, but which were designated as "acceptable" in the sense that national priorities required housing action in high risk areas. The results of this attempt to mix good business practices with bad business practices are well known. The programs failed to help the intended beneficiaries, and seriously compromised the credibility and thus the effectiveness of FHA's non-subsidized activities.

We must recognize the contribution which FHA's traditional approach has made to unsubsidized homeownership in this country, and allow our unsubsidized insurance programs to be administered in a way that builds on the natural potentials of the private market, giving direction and moving the market toward national priorities. High risk and subsidized housing programs require a completely distinct approach. We will propose a separate administrative structure for them later in this paper.

B. Housing Costs

The other major area in which the federal government can expand the availability of non-subsidized housing is in the encouragement of measures to limit costs. Despite the unprecedented construction boom of the past two years, and despite the laudable efforts of the Romney Administration, the price of housing has been going up at rates which could threaten the expansion of homeownership.

While the dynamics of this price escalation are not completely understood, we can identify several areas -- in addition to mortgage finance -- where federal attention might help to limit costs.

Recommendations

1) Existing housing in general offers the homebuyer a better value than does new housing. We believe that HUD should encourage increased activity in the existing market. Rehabilitation should be expanded and stringent requirements relaxed where necessary.

2) The fastest rising component of housing construction costs in recent months has been materials. The federal government should examine the reasons for these increases, and should take necessary steps to insure the availability of adequate supplies in this field.

3) There is evidence that construction costs could be further reduced through innovations in building techniques, materials, and ways of utilizing land. HUD should greatly expand its programs for providing public and professional education in these areas. We believe that the housing industry, including REALTORS, should also seek to improve on traditional approaches where possible. REALTORS would consider an educational program of their own toward broadening understanding of the potential advantage of lower priced housing through innovations.

4) One of the most significant factors contributing to housing costs increases has been land prices. The New York Times reported recently that land values in some urban areas have risen more than 400 per cent in the last twenty years.

While the supply of land is inherently limited, steps can be taken to make it go farther in relation to demand. The rental market generally has exerted a stabilizing influence on the overall housing market by competing with the monthly payment levels on home mortgages, and we believe that the government should take this into consideration when new programs are considered or tax reform is weighed. More basically, new land use planning techniques can be brought to bear. REALTORS believe that land use issues of strictly local concern should be decided by local decision makers rather than the federal government. However, the REALTORS now support a land use policy that includes the development of state land use plans in areas of critical environmental concern and in regions heavily impacted by

public facilities. The development of such plans should, among other things, help minimize the spread of "no growth" moratoria at the local level, thus helping to stabilize the cost of land and, accordingly, the cost of housing.

5) We also believe that the costs of owning and maintaining housing should be reduced. HUD should research and encourage the use of building materials and designs which require low maintenance, and particularly which conserve energy for heating, cooling, and lighting.

C. HUD Leadership Remains Essential

REALTORS believe that HUD's primary focus in the non-subsidized area should be to perform a leadership and educational role, particularly in the fields of housing finance, mortgage insurance, and housing production and costs. In so doing, it is vital that the federal government work in close coordination with the industry groups - builders, lenders, private insurers, REALTORS and others - who are actually in the field bringing people together with housing. Government housing programs need the input of industry during development, and the support of industry in implementation. Strengthening of this public-private link will be a key step toward rapid and effective fulfillment of our housing goals.

Recommendations

1) HUD should improve the liaison structure between the federal government and industry groups involved in housing. The extension of this liaison to other federal agencies involved in housing is also a possibility. Channels should exist for a continuous interplay of ideas and information. We commend the invitation which HUD has extended for industry comment on housing programs as a strong step in this direction.

2) This general liaison structure should be supplemented by the organization of specialized task forces which would aid in preparing local communities, their representatives and industry leaders, for housing programs which are entering their areas. An approach of this kind was used in implementing the federal revenue sharing plan with considerable success.

HOUSING THE SUBSIDIZED

Section 235 and 236 programs of indirect subsidies to homeowners and renters have been suspended by HUD as part of the major housing review now underway. We believe that this suspension is justified and that new alternatives should be found to these subsidies. We recognize that there is a role for government to play in making housing available to the poor, and that the private market cannot fully discharge that obligation.

However, we submit that the "frozen" subsidies reached only a small share of the poor. Their approach has been undesirable largely because it has continued to subsidize housing "production." Housing supply and demand are determined not only by the production function in a market place, but by the distribution function as well - and if overemphasis is placed upon one then inefficiency is likely. The government should replace the term "production" with the more descriptive, comprehensive and accurate concept of "making housing available." Under the past production orientation, people requiring assistance have often been housed in new housing, very frequently of a higher standard than that occupied by those in the same neighborhood who did not seek or did not receive subsidies for themselves. A community which lacks builders interested in the subsidy programs may be similarly under-assisted. We therefore believe that a new program in this area should be geared to the needs of the individual recipients to maximize equity and flexibility.

The production approach has also put a premium on "grantsmanship." Localities and industries have wasted their resources on competition for federal funds, and aid has often been allocated according to expertise in application procedures rather than underlying need.

If these programs do not work, we should be bold enough to discontinue them. But we should not abandon low-income individuals.

Recommendations

1) We believe that responsibility for subsidized housing assistance along with all other types of human resource subsidies to individuals and families should be transferred to HEW.

This action would be consistent with President Nixon's proposal for reorganizing the Executive Branch around goals, rather than by narrow subjects or limited constituencies. The President's plan called for four new departments, two of which would be directly concerned with housing. The Department of Community Development, as its name implies, would deal with communities - urban and rural - in the creation and preservation of a safe and wholesome living environment. The Department of Human Resources would deal with the concerns of people as individuals, as members of a family - a government organization focused on human needs.

REALTORS believe that the provision of housing assistance to individuals who require government subsidies can be best administered through the human resources-oriented agency. Unless or until a Department of Human Resources is created, these responsibilities should be shifted to HEW.

2) A major human resources experiment should be considered by HEW to develop alternatives to the existing fragmented program approach. It should include the following:

(a) End the present welfare system as symbolized by the Aid for Dependent Children Program, which places a premium on non-work, separates families by encouraging the flight of fathers from the home, and discriminates against the working poor who are not on welfare.

(b) Create, on an experimental basis, a comprehensive, cash-and-certificates program of income maintenance for those now on welfare and for the working poor. This single plan should include certificates which can be used for housing supplements, food stamps, medicaid, and other needs.

Such a program would incorporate many features of the Family Assistance Plan proposed by the Nixon Administration in 1970, but would go farther, meeting the criticism that the Nixon plan would have retained the piece-meal approach that plagues the current programs for helping the poor. At present we have myriad separate programs, direct and indirect, for food, medical aid, employment and training, housing, etc. -- in addition to basic income supplements. Even what we know as "Welfare" is actually a complex of separate programs. Some of these assistance plans are geared to income; some are for old people, some for children, some for invalids. Some are for rural areas, some for urban centers, some for specific geographical regions. Their administration radiates from central agencies like HEW and HUD to others as diverse as the Department of Labor, the Farmers Home Administration, the Social Security and Veterans Administrations. And most of this confusion is duplicated further at the state and local levels. While many of these programs undoubtedly should remain as they are, there is clearly a vital need for review and consolidation.

The problem with these overlapping benefit programs was recently emphasized in a report of the Joint Economic Committee of Congress on welfare reform.

"...Many sample households receive benefits from four, five and more programs, most of which keep separate records and are administered independently of other programs. This administrative setup is certainly wasteful of public funds. Equally important, however, is the burden placed on people in need of assistance to find out what programs exist and what the eligibility requirements are, to apply for and claim the benefits and services, and to comply with all the disparate rules and regulations involved."¹

Taking a similar position on welfare reform, Richard P. Nathan of the Brookings Institution recently expressed the view that housing "...particularly...may be a key to future welfare reform." He recommends the use of

"...a 'housing supplement' (not a housing allowance) to income (both work and welfare income) which would be available to all persons on the basis of need (not just those who live in new subsidized housing) and would vary according to place of residence to take into account differences in housing costs, particularly between urban and non-urban residents."²

This kind of approach, combined with parallel supplements for food and medicine could comprise a far more flexible and efficient system for assisting the poor.

(c) The plan should be accompanied by a unified counseling program in which a single counselor would advise a family on all aspects of its finances - housing, food, employment, etc. The housing portion should be designed to assist the poor in both locating and better utilizing available housing. It is well recognized that educational factors must be considered so that a low income family taking advantage of government assistance understands all the responsibilities that come with accepting assistance.

¹Joint Economic Committee, Subcommittee on Fiscal Policy, Paper No. 6, How Welfare Benefits are Distributed in Low Income Areas. Washington, D. C., 1973

²Richard P. Nathan, "What Went Wrong with FAP: Should We Give Up?" Presented to the National Conference on Social Welfare Atlantic City, New Jersey, May 28, 1973

(d) The plan should be put to work as a major experiment. This Association has supported the HUD housing allowance experiment in several cities aimed at determining impact on both the supply of housing and the demand for it. But this experiment may offer only partial answers. The broader income maintenance experiment would be more instructive over a shorter period of time. The program of course must have clear constraints on its budget and duration. If it does not work in practice, it should be terminated.

(e) The President said at a press conference on March 2 of this year:

"I believe that it is essential that we develop a new program and a new approach to welfare in which there is a bonus not for welfare but a bonus, if there is to be one, for work. That may be over-simplifying, but basically, in our welfare system today, because of varying standards and because the amounts for food stamps and other fringes have gone up so much we find in area after area of this country it is more profitable to go on welfare than to go to work. That is wrong. It is unfair to the working poor. The Family Assistance Program I thought then, and I think now, is the best answer."

3) Finally, we believe that federal revenue-sharing offers new opportunities to change the focus for housing programs. If 235/236 programs work in one place but not in another, the existence of State and Local Housing Development Corporations and State Housing and Home Finance Agencies offers broad new opportunities for conversion of federal programs to be adapted to local needs.

CONCLUSION

To conclude our summary section, we believe the government should greatly expand its role in searching for alternatives to develop reasonably priced housing, to provide a more effective housing assistance program for the poor and to better organize the government housing function. Possibly the most crucial question for housing involves costs. The government should thoroughly examine all of the complex variables that affect production, allocation and maintenance of housing with the aim of finding ways to reduce costs while improving the market mechanism.

To meet the needs of the poor we will need experimentation in many communities with different living environments, carefully examining the interrelationship of human resource and community development programs. REALTORS® are convinced that housing questions must be approached by looking at all the factors that affect our nation's communities. For the poor this means an overall plan of welfare and housing subsidy reform which will effectively meet the fundamental needs of income, food, health and shelter.

REALTORS strongly suggest that these efforts begin.

PART II.RECOMMENDATIONS FOR ADMINISTRATIVE AND STRUCTURAL
CHANGES IN HOUSING AND HOUSING FINANCE PROGRAMS

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The counseling that we have experienced in our area is often primitive and this responsibility is lodged in social agencies whose representatives are too frequently inexperienced. The counseling function could be more effectively handled by the mortgagee. ^{7/}

The leaders of our community did not endorse housing programs. Our community had only a moderate demand for services or housing. Normal prices were below surrounding areas. Jobs were limited. We ascertained that an influx of people on subsidy would create demands for services and amenities, and the present taxpayers' burden should not be increased. ^{8/}

We have little or no significant housing problem locally. The private sector is providing quite adequately for all segments of the market. And yet, by certain federal standards, we would appear to be in bad shape. I feel again that each area should be judged on its own merits, not by criteria coming from some bureaucrat's desk based on information collected in a ghetto area of Cleveland.

We can all agree that the programs as tried have generally proven to be unworkable. I feel that my tax dollar does not need to be used to put low income and welfare cases into new housing. I definitely feel that some incentive program to repair, refurbish or otherwise upgrade existing housing would be far less costly than new construction, and would be done by the private sector more efficiently and more effectively. These upgraded units could then be leased under Section 23 for occupancy by low income families. This would then put the new house out in front as an incentive to improve themselves, if they are so inclined, rather than being used as a reward for being poor. ^{9/}

I also believe that FHA must be made more responsive to local areas and conditions by granting greater authority to local directors. In this same regard, we should push even harder for a market interest rate concept in a local area, rather than a rate pegged by Congress or the director with political and social overtones rather than as a true mortgage rate. ^{10/}

Where the problems are most serious it is often because they are peculiar to the area-- high percentage of substandard housing requiring reconditioning, high percentage of low income families, high turnover rate, etc. We suggest two answers:

- 1) an increased assignment to local government agencies of buyer and property approval,
- 2) a program to stimulate pride of ownership on the part of the buyer and to provide instruction in property maintenance.

The Sacramento Urban Area has established a Housing Task Force as part of the city-county development plan for the next 30 years. A city and regional planning firm has been hired as consultants. In conjunction with a citizens committee, the firm has analyzed the area needs and is now investigating ways and means of effecting rehabilitation and financing. The developed plan is due for submission to the County Board of Supervisors and City Council some time in June 1973. Various means of financing, including a locally funded "revolving fund" are under consideration. ^{11/}

^{7/} Robert E. Scott, Jr., President, Eastern Union County, N. J.
Board of REALTORS®

^{8/} Jo Richards, 14th District Regional Vice President,
California Real Estate Association

^{9/} Northwest Real Estate, Inc., Coeur D'Alene, Idaho

^{10/} REALTOR® T. G. McMahon, Northwest Real Estate, Inc.
Coeur D'Alene, Idaho

^{11/} Sacramento Board of REALTORS®, Sacramento, California

A. Program Design and Operation-

Low-income family housing assistance programs should have three fundamental elements: (1) training programs for educating low-income families in the care and use of their living units; (2) income qualification determined on a local basis using local area income levels as the standard; and (3) administration on a local market area basis.^{1/}

Subsidized programs should include mandatory counseling and certificate of eligibility should take into account income, maintenance, rental and home ownership responsibility prior to purchase or lease.^{2/}

It should be emphasized that whether mechanisms are designed to stimulate production or to increase utilization of existing housing stock, the programs should be formulated and administered on a market area basis with national and state governments allocating resources and executing only general supervision.^{3/}

Centrally administered housing programs on a national scale seem to be unworkable. The concept of designing programs for "specific market areas" would increase local participation and improve efficiency. The FHA 235 and 236 programs, while successful in some locales, were the target of abuse and mismanagement in other areas where their structure was inappropriate. It is believed that there are market areas in Virginia still in need of production incentives. In this connection, we find that land use restrictions and environmental protection agencies' requirements are greatly increasing the costs of housing. It seems particularly appropo that the Environmental Protection Agency should be required to publicly acknowledge the costs of programs they are imposing on states to improve the environment. There is strong popular support for a quality environment, but there is little understanding and practically no dependable information at the local level of its attending costs.^{4/}

Community development programs should be administered on a local level with industry expertise cooperating with local governments.^{5/}

Subsidy, if any, should apply to redevelopment of urban and inner city areas - not for purchase, but for reclamation of blighted or substandard housing for resident owners. Government subsidy can include engineers and contractors fees for approved rebuilders.^{6/}

^{1/} National RLC Subcommittee on Housing Subsidies

^{2/} RLC Subcommittee on FHA Operations

^{3/} James H. McMullin, Chairman, Legislative Committee,
Virginia Association of REALTORS®

^{4/} James H. McMullin, Chairman, Legislative Committee,
Virginia Association of REALTORS®

^{5/} California 22nd District Board Meeting held 4/27/73 at
Los Cerritos Board of REALTORS®

^{6/} REALTOR® Ebby Halliday, CRB, Dallas, Texas

In many urban situations, the problem of providing assistance is not lodged in "production" but in providing economic "ability" (buying power) coupled with training and discipline in the use of modernized shelter. This implies the application of housing allowances as alluded to in the statement of Mr. Sudbrack on April 5, 1973. It should be emphasized that whether mechanisms are designed to stimulate production or to increase utilization, the programs should be formulated and administered on a market area basis with national and state governments allocating resources and executing only general supervision. ^{12/}

There is no question in my mind that used housing has been ignored and neglected. Much of the needed housing for low income families is, or could be, made available via the used housing route. I see no logic in insisting upon thousands of new housing units in a community when at the same time there prevails a sizable inventory of used housing repossessed by both FHA and VA which could be made to answer the requirements of many low income families. Many of these are even boarded up rather than made available for low income families. Generally speaking, the compelling reason they have been repossessed as the result of mortgage foreclosure is that nobody wanted them badly enough to purchase them from the former owners to pay sufficient to permit the sale of them as an alternative to foreclosure. ^{13/}

Most of the allocated funds to the housing of low income families should be channeled to the rehabilitation of pre-owned homes. This policy would enhance deteriorated areas of the community and would provide employment and housing in needed areas. An insured interim financing program should be instituted for rehabilitation. ^{14/}

Consolidation of departments- More state or regional authority. We see little consideration given by top-level administrators to state and regional influences. We think we have been injured because of practices in other parts of the country which were unknown here, and which dictated policy change. We would like to see HUD directed and administered by those who have had some background in real estate brokerage. ... In view of the satisfactory performance of the Lincoln Housing Authority over a period of years, we support the concept of a city or county authority, with full realization of the responsibility such concept entails. ^{15/}

What can be done to house the poor? Most low-income families can be most adequately housed by used housing, just as low-income people are provided with transportation by means of used automobiles. If you want to do more than that, let local welfare agencies give money directly to the people and let them take care of themselves. We urge that the federal government get out of the housing subsidy business altogether. ... Leave local housing problems to the locally involved. We haven't found any legitimate problems that can't be solved locally. ^{16/}

^{12/} James McMullin, Chairman, Legislative Committee,
Virginia Association of REALTORS®

^{13/} Silas F. Albert, Grand Rapids, Michigan

^{14/} Omaha Real Estate Board, Omaha, Nebraska

^{15/} The Nebraska REALTORS® Association, Lincoln Nebraska

^{16/} Oklahoma City Metro Board of REALTORS®

We believe there is a need for subsidized housing for low income families. We strongly recommend the separation of FHA from HUD. The recommendation for separating FHA from HUD would be with respect to FHA handling non-subsidized housing while HUD would handle any programs related to subsidies.

We found that the 236 apartment projects in our area are working out very satisfactorily and that the 235 program has been very unsatisfactory. We would like to see HUD sponsored, locally controlled rent or lease subsidizing from privately owned apartment projects. It is felt that the reason the 235 program was unsatisfactory was primarily due to the inability of the recipient to handle property maintenance and all responsibilities of home ownership.

We think that FHA control should be greatly decentralized, as an example-- California Regional Office is in San Francisco which is too far removed from San Diego for them to know what our housing needs and the market conditions really are. We think there should be more consistent policies and procedures than we presently have. 17/

...there is no other area more in need of government help than our East St. Louis, Illinois:

1. For the extreme trouble areas an outright government grant to the purchaser of an existing home for remodeling, repairing and decorating. The seller in this instance would then finance until purchaser qualified for a normal loan. This we feel would eliminate the continued record keeping and involvement of the government in interest subsidies and cost less in the long run. We feel it would halt blight and progressive deterioration and reduction of property values.

2. For small communities under the USDA Farmers Home Administration we suggest reinstating the subsidy program on pre-owned homes. Our experience has been that the Farmers Home Administration was carrying out the program to the satisfaction of everyone.

3. Replace government employed with local appraisers holding a designation such as S.R.A. or M.A.I. and whose reputations and experience will withstand close scrutiny. 18/

It is the consensus of this committee that the greatest problem going in public housing may be solved, and accomplished by a redirection of the HUD program to provide funds, technology, and assistance in off-site improvements-- appurtenant facilities... i.e., recreation, sewers, highways, streets, etc. 19/

In 1972 our firm participated in a project in Lincoln, Nebraska, where our firm built 24 single family houses on scattered sites in established neighborhoods for our local housing authority with HUD funds.

This is a complicated, long drawn-out process which took us 2½ years from start to finish. I met a builder-Realtor from Pittsburgh who worked a deal with his housing authority which I thought was a good idea.

17/ El Cajon Valley Board of REALTORS®, El Cajon, California

18/ Guy Haltenhof, Chairman, Legislative Committee
East St. Louis Board of REALTORS®

19/ Donald H. Taylor, Chairman, Legislative Committee,
Santa Maria Board of REALTORS®

He picked up a vacant lot, submitted lot and a set of plans to the housing authority and said this house on this lot will cost you about \$23,000 to \$24,000. The Housing Authority says looks good, build it, we will inspect and accept or reject after house is completed. Builder-Realtor then builds house on a conventional basis. The housing authority and HUD has 90 days to look at house and either accept or reject. If they accept they pay the purchase price. If they reject the Builder-Realtor sells to someone else or rents the house.

Our firm would be willing to accept this risk, and I am sure others in the country would too. A lot of Builder-Realtors build on a speculative basis. The advantages are evident, I am sure. Eliminate all the government red tape, cut the cost. All HUD has to have is one inspector to see if the finished product is acceptable. The City of Lincoln makes sure we build right. We have framing, electrical, plumbing, heating and final occupancy permits to get.

If HUD needs somebody to try it, I think we could do it in Lincoln. As you can see, this would put this part of housing for low income under local control. 20/

First, we would like to address ourselves to the nonsubsidized housing. This section of the housing business should go back to the old FHA way of doing business-- that of merely insuring the loan for the mortgagee. We must have a different program for properties that are in good state of repair, well located and do not have deferred maintenance. This can only be accomplished by establishing a new program, let's call it "201". The homeowner should be able to request an appraisal under this "201" program and if the home qualifies the property would be appraised on an "as is" basis, similar to present day conventional appraisals. If the FHA appraiser, upon inspecting the property, found that there was considerable deferred maintenance or if there was something about the property that would adversely affect the health and safety of the occupants, then the property would be rejected. This program would be available to any home in the metropolitan area and if the owner had kept it in good first class condition, whether it was in the intercity or the suburbs, he could receive an appraisal under this program. We think that this would encourage people to keep their properties up and reward the person who does so.

If the property was rejected on the "201" program, then the homeowner could ask for another appraisal, paying another fee, and obtain a 203, 221, 235 appraisal listing requirements that need to be done before the loan could be insured. If the house is in too bad a condition, then the property should be rejected on all bases as is presently being done.

The new "201" program would operate similar to the way properties are presently appraised on a conventional loan basis and we see no reason why it would not be workable. Many times the prospective purchaser could make any changes or minor repairs himself after he has purchased the home. These minor repairs can easily be done by the home purchaser at lesser cost and more to his own satisfaction than as in the present instance. Presently, these repairs must be done before the closing of the sale and are generally done by outside workmen at a high cost.

Further, by being able to purchase a home without the seller having to go into a lot of expensive repairs, the prospective buyer will have a much broader selection of homes on which he might be able to negotiate and purchase. FHA would benefit because these would be good loans on good properties in good locations with low default ratios and FHA would receive the income from the mortgage insurance premium to help offset some of the cost of losses on other programs. In other words, FHA would be helping the buyer and themselves at the same time.

We further recommend that downpayments on FHA loans be eliminated up to \$20,000 with a 5% downpayment on any amount of the purchase price above \$20,000. Inflation, high rental rates and increased costs of living make it very difficult for many persons to acquire the necessary downpayment. The successful "no downpayment" programs of the Veterans Administration indicate the downpayment is not really the determining factor in whether or not the loan is a good one. 21/

B. Problems in Administration and Procedures

Appraisals should reflect the finished product or, as an alternative, the appraisal should reflect the property as is with alternate appraisals allowing for additional requirements imposed by the FHA.

HUD should create liaison through industry-recognized specialists to be made available to serve all echelons of HUD (re working problems including in the field).

Encourage career promotions to the highest level of HUD offices. 22/

Certification of roof, electrical, heating, plumbing and termite clearance should be required but other cosmetic repairs should not be a matter for certification but left to negotiation between buyer and seller. 23/

If FHA continues to operate, there must be major structural changes. FHA must divorce itself from the idea of being a welfare agency. Rules and procedures have to be geared to the various communities. For example, we just received the following from one of the mortgage brokers: "we have been unofficially advised by FHA that rolled roofing will no longer be acceptable to them. If a new appraisal is ordered on a home with a rolled roof, a new roof will be required." This is ridiculous.

In the Southwest, because of the lack of snow, many houses have flat roofs. One of the most acceptable roofing for this type of house is a rolled roof but some man in Washington decided it was no good. I would think that the local directors should be given greater latitude in underwriting requirements and also in property qualifications. National directives should only cover the overall picture and not specifics. I remember when Quentin Wells discussed the prohibition of carpeting in kitchens and bathrooms with me last March in Washington. This was a national directive and HUD did not realize that homes in our part of the country are generally built on slabs and do not have wood sub-flooring. When I pointed this out to him, HUD changed their directive and now permits carpeting when the carpeting is laid on a cement floor. Has any thought been given to transferring subsidized housing to HEW, or is this sacrilege? 24/

In response to some of the problems of the FHA, please consider the following:

1. The FHA should have the same inspector for both initial and compliance.
2. The FHA needs a more realistic expiration date - or automatic extension- in the event of minor incompleated repairs.
3. Compliance inspection should be done rapidly following request. Many deals are lost due to delays.
4. The first inspection should be complete. Added requirements almost always cause untold grief.

22/ RLC Subcommittee on FHA Operations

23/ Meeting, 22nd District Boards, Bellflower, California

24/ Budd Krones, Krones Realty Corporation, Tucson, Arizona

5. Initial rejections should indicate an approximate value so that seller can decide whether or not to spend money.

6. The maximum limits for one-to four-family houses should be raised without delay to a realistic level in affected areas of the nation. For example: Newark area should be raised under 203(b) to \$40,000 for single family; \$40,000 for double family; \$45,000 for three-family dwellings, and to \$55,000 for four-family dwellings.

7. The upper FHA value should be used only when the seller pays the closing costs for the buyer.

8. Suburban experienced appraisers should not be used in urban areas.

9. Underwriters should be permitted to hold cases in their possession while getting small bits of information necessary to complete a transaction. ^{25/}

Re FHA processing time: On the sale of pre-owned houses through new financing where there is an equity of about 35% of the sales price, it is virtually impossible for a seller to realize anything close to his full equity even though he has a favorable market. This type of a sale could be of extreme benefit to both seller and buyer if FHA insurance could be issued on a second note payable to the seller in the amount of 25% of his equity; payable over a 10- to 12-year term, where a mortgage company would not be required to find a market for said note. This situation would apply only when the owner (seller) is in a position to keep said note, with the right to borrow, transfer or sell said note. It would save a tremendous amount of money, expenses, time, and would get the public involved in government (FHA) guaranteed mortgages.

The processing time on pre-owned houses that originate with an application for a loan at any mortgage company eligible to process this type of loan is entirely unrealistic, and in many cases places the seller and buyer in a critical situation due to the lingering and doubtful circumstances that surround this type of sale. More direct communication between the FHA processing office and the seller or his agent would eliminate or solve this problem. ^{26/}

Correct abuses and delays by doing the following:

1. Appraise properties in "as is" condition.

2. List repairs on appraisal and allow purchaser the right to get the work done that is listed. They should select their own contractor from an approved list from FHA. After the work is completed the purchaser would sign a statement that he is entirely satisfied with the work and then FHA or the mortgage company would inspect and approve payment. This additional amount of money would be added to the original mortgage and would be reset.

3. The above would eliminate the tremendous problem of prolonged processing time. Seller would settle immediately and therefore your office would not receive calls regarding settlement from the distressed seller, mortgage company or the agent. You must admit that this would take off many

^{25/} William Jackson & Associates, New Brunswick, New Jersey

^{26/} Rudy Barrientos, REALTOR®, San Antonio, Texas

pressures your office encounters and therefore more time could be spent on processing, thereby making your office more proficient and getting possession for the people who are usually living in homes which are classified "unfit for human habitation."

4. FHA would have an approved list of attorneys, contractors, or architects who would represent the new owner and undertake and supervise the rebuilding or repairs at a fee to be determined. ^{27/}

Get properties on market immediately. The number of properties per management broker be dependent on ability to handle, with no limitations at this time. Here are some of our reasons:

1. FHA requirements as now stated to limit at 100 houses or less may result in an inadequate number of qualified participating management brokers.

2. A number of experienced management firms are committed to handling a larger number of properties than indicated. These firms may have already contracted for equipment, personnel and facilities that could not be maintained with a limit of 100 or less properties.

It is our understanding that FHA proposes to write specifications for rehabilitation of repossessed homes.

1. In our opinion FHA should not be involved in writing specifications in place of the management broker. In view of the tremendous number of properties that have been repossessed and the \$200 million potential loss, it is probable that FHA is not equipped to handle this volume within a reasonable period of time.

2. We, therefore, recommend that management brokers continue to be the persons to write specifications and that they be compensated adequately so as to enable the hiring of specialist teams skilled in FHA Minimum Property Standards, local building codes, and in ways to efficiently market housing.

Market properties effectively. The request for a marketing recommendation is complicated at the present time by the fact that due to the lack of personnel at the FHA and usual red tape, properties have not been placed on the market in any quantity.

For example, it has been reported that over 6,000 repossessed properties are now on hand and a possible 20,000 or more will be in the immediate future. Yet, we note in the January 1972 HUD-FHA For-Sale or Rent list (Form 1220-1) that only 329 properties were listed and of these 126 were vacant lots, leaving only 203 houses for sale.

With this small number of homes on the market, every good home is met with many offers and the system of drawing from among those received during a given period of time results in:

1. Dissatisfied salesmen who after two or three unhappy experiences decide to spend their time selling properties on which, if they get a buyer, they will know they have a sale;

2. Dissatisfied would-be buyers, especially if their name hasn't been drawn on a previous deal. They unjustly tend to blame the salesman and he loses them as a potential customer;

3. No benefit to FHA to have 20 customers plus or minus on one house and other properties not sold.

^{27/} Wilmer S. Weber, Chairman, North Philadelphia Realty Board

We have been informed that additional help is being acquired by loan from other sections of the country, and the hiring of additional people for the Property Disposition Section. The placing of additional properties on the market may spread out the demand and eliminate some of the problems. If this doesn't work, and we understand a 90-day trial period has already been agreed upon, we feel that the exclusive listing policy, with certain limitations, should be considered. We suggest the following:

1. The compensation for the managing broker should be sufficient to make it profitable for him to continue without selling but he should not be prohibited from selling.
 2. The distribution of exclusives must be on an equitable basis and all of the following elements should be considered:
 - a) the location of his office with relationship to the property being offered for sale;
 - b) his record with respect to what he does after he is given an exclusive listing;
 - c) the number of exclusives given at any time should be limited with a provision for replacement upon sale;
 - d) it is mandatory that every broker who desires to participate be given an opportunity and listings may be assigned regardless of his office location and then let his action or lack of it be the guide for future listings;
 - e) exclusive listings should be distributed in a manner assuring that all participants receive and accept both "prime" and less desirable listings.
 3. The exclusive listing would eliminate the disadvantages of the present draw system. All offers would be submitted through the listing broker and by him immediately to the FHA. In the event of more than one offer the FHA would accept the best one.
 4. All brokers given exclusive listings would be required to cooperate on the sale with all other licensed brokers.
 5. The present monthly list of properties for sale would still be published with the addition of the name of the exclusive listing broker. It might be desirable to publish this list weekly.
 6. An increase in commission rates to cover increased costs in merchandising properties.
 7. Immediate discontinuance of listing property with non-licensed persons.
- Improve processing of sold properties.
1. Immediate processing by FHA following their acceptance of offer to purchase.
 2. Brokers may place mortgages with mortgagee of own selection.
 3. "Points" to be kept at current market level to assure immediate placement. 28/
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We are aware of objections to FHA appraisals attributable to conditions, specified by the appraiser, that require correction prior to approval. It is suggested that FHA appraisers should simply evaluate the property and allow the local governmental authority to inspect for compliance with the housing code. Too many appraiser-initiated requirements for cosmetic improvements that are not necessary have been found to be attached to FHA appraisals as conditions to be corrected in order to have FHA approval.

Many times one appraiser specifies conditions to be corrected and on reinspection a second appraiser comes, approves the correction previously required, and then lists other items to be corrected. It is felt that the appraiser who conducted the initial appraisal should be the same one to make the reinspection, and that further conditions should not be attached upon reinspection. 29/

One of the glaring weaknesses in the FHA program on financing the sale of older homes is in the way of appraising these homes for the buyers. The appraiser apparently does not take into consideration the soundness of the structure, so he puts an appraisal on the property that is high enough to meet the requirements of the loan, the buyer moves in, lives there awhile, sees what a lemon he has purchased, has no resources to make repairs, so he moves out. What has he lost? He made very little down payment, his payments he can consider as rent, so he hasn't lost much. 30/

The disadvantages of the FHA program are evident and are becoming more acute. The most objectionable features are as follows:

1. It takes three to four months to process a loan. It would appear that this could be shortened by greater efficiency and less wasted time on unnecessary detail. The fact that private and savings and loan financing only takes one to two weeks would strongly indicate that there is something radically wrong in the procedure which FHA employs.
2. The costs of processing, particularly the points, have at times been extremely high and therefore objectionable.
3. The fact that the points are not pinned down and occasionally fluctuate is very objectionable, and particularly if they increase after the sale is made.
4. While some repairs are justifiable, others are insignificant, consume unnecessary time and delay the transaction.
5. An extension is required, in some cases, after the initial appraisal and commitment. There have been cases where additional repairs have been added after the property is sold and the repairs first required already completed. This is extremely objectionable as it obviously acts as a trap.
6. There has been a history of refusal on the part of the FHA office to deal with real estate brokers. Undoubtedly there have been some reasons for this refusal. However, it has resulted in brokers being unable to spot trouble points in transactions and has therefore resulted in unnecessary delay in processing.

29/ Paul L. Fowler, Executive Vice President, Prince George's County, Maryland Board of REALTORS®

30/ W. Leo Fullerton, Bellefontaine, Ohio

We believe the FHA program has been very helpful and can continue to be if properly administered. We strongly urge a closer working relationship between administrators of the FHA program and organized real estate, particularly individual real estate brokers. 31/

FHA needs better qualified and more motivated employees. We feel that the system of hiring in the Los Angeles office is being used as a vehicle to provide jobs for minorities. While we have no objection to being served by any race or creed, we are not being served, because these employees are not able and will not perform their jobs in an adequate manner. 32/

Another possible way of helping the low and moderate income buyer would be for FHA to relax the condition of approval prior to construction. In other words, if a builder builds a home that is approved by city or county government and passes all inspections, it should qualify immediately for minimum down FHA financing. It is my understanding that James Price, San Francisco Area HUD Director, is in agreement with this idea. Many lots are available in scattered areas, and builders would be encouraged to develop these lots if the red tape were cut. 33/

I believe the answer to the problem of housing in our area and perhaps the nation would be:

1. A training program for those who need be taught how to care for a home or apartment.
2. The use of competent, honest local fee appraisers in making appraisals of all types of property.
3. Processing- more advice and from competent local Realtors on matters of their and the nation's community.
4. FHA should be set up under its old standards of underwriting and staffed with competent non-political personnel. In Iowa we are very fortunate to have a good FHA and VA office and personnel where a buyer can usually complete a loan transaction in 3 weeks. In Illinois it's a sad thing for all people involved. It takes an unnecessary 3 months on nearly every case to close a transaction. This is, in my opinion, not necessary and should be corrected and the type and quality of personnel affect the public in buying or selling a home.
5. Our community needs FHA and VA to help people start on the road to home ownership. Some of the requirements caused by the gangsters in the larger cities, Detroit, Chicago, etc., caused the honest home owner to be punished when he goes to sell his home on FHA, overreacted to unnecessary repairs and restriction.
6. The FHA never should have made repairs on homes. A statement should be signed by the buyers at time of closing that they will be responsible for the home and schools should be set up to teach them how.

31/ Douglas Stirling, President, Southeast Board of REALTORS®
Huntington Park, California

32/ Gerald P. Clifford, Chairman, Political Affairs Committee
Bakersfield, California Board of REALTORS®

33/ Charles R. Travers, Vice President, Solano, Calif. Board of REALTORS®

7. If subsidies are to be given they should be given directly to the one that uses them. He should deal directly with the Realtor of his choice if buying he should have a right to choose his home. ^{34/}

Based on experience, suggestions for improvements in structural, operational, or organizational form to make programs more effective:

1. Built-in maintenance program with mortgage
2. Bonus for good maintenance at the end of the year
3. Require construction specifications to provide maximum convenience to maintenance
4. Decentralize organizational direction
5. Use local control and coordination locating subsidized programs. Eliminate concentration.

Evaluating the FHA mortgage insurance operations in the community:

1. Poor communications and very poor morale in HUD offices
2. Total lack of cooperation
3. Need intra-HUD public relations training program
4. All federal appraisals should be acceptable across the board, one agency
5. All appraisers should be certified
6. No conflicts of interest permitted
7. FHA financing under all programs other than 235 and 236 must continue to meet our housing needs. ^{35/}

Appraisals- FHA, VA and conventional loan bodies should establish common grounds for qualifying appraisers and appraisal requirements, so that a property owner, with one fee, may place his property on the market with the widest range of financing tools at his disposal, to appeal to the widest cross section of buyers. To require three separate appraisals is ridiculous.

Foreclosures- While the problem of foreclosures is not as critical as it was in the 50's and 60's there should be re-established the original procedure for foreclosure so that the defaulting party finds it uncomfortable to walk away from a property. According to the original intent, when a mortgagor defaulted, the loan company foreclosed, repossessed the property, sold it for the highest price, entered suit against the mortgagor for any deficiency, and then went to FHA to be reimbursed for any final deficiency. As it stands now, FHA (and VA), when mortgagor defaults, repossesses the property directly and then sells it. This defeats the means of redress against the mortgagor, leaving his record clear of judgment, and makes it easier for him to do it again. I believe if this procedure were re-established, the foreclosure rate would drop, and the mass foreclosure problem would not arise again. ^{36/}

^{34/} John C. Ackerman, Davenport, Iowa

^{35/} Gene Nebeker, Executive Vice President, Las Vegas Board of REALTORS®

^{36/} Donald W. Newton, Executive Officer, Mississippi Association of Real Estate Boards, Inc.

The service must be improved to eliminate waste of time in processing. FHA and VA appraisals should be interchangeable; an estimate of value is just that, and it does not follow that each should have its own criteria in determining value.

In the past evidences of corruption or ineffective practices have been followed by blanket orders of restriction or change for the entire nation. The area or regional directors should have the competence and the authority to administer their respective areas so that the entire nation is not inhibited by such cumbersome national directives, and, further, that the area or regional directors should have the authority to deviate from the national policy in order to adjust advantageously to meet local problems. 37/

Since personal living standards cannot be legislated or policed, the only other remedy is through a program of counseling and education. A lack of understanding and appreciation for the program is a major cause of this problem. The purchaser must be capable of understanding and appreciating the opportunity to participate in the program. He must be stimulated to desire to have pride of ownership and to anticipate the reward of equity growth to be gained from good maintenance as well as from principal payments and inflation. In most areas counseling is not available through FHA and the responsibility falls on the lender, putting a burden on staffs not really equipped to handle the extra work. 38/

FHA regulations are contrary to free enterprise. Where a qualified investor used to buy run-down properties or older properties and rehabilitate them for resale under FHA terms, it is now necessary for him to disclose purchase price, if owned for less than two years. When issuing a commitment for insurance FHA does not consider selling expenses, variable discount points, the cost of holding before closing a sale, and frequently requires additional repairs other than those required originally-- as a result there is little rehabilitation being done since there is no allowance for a reasonable return on money invested.

To be effective FHA must be more consistent in standard for pre-owned properties, basing requirements on local regulations and building codes, local economy and local demand and customs. What is pertinent to housing in Detroit or Massachusetts does not apply to Dallas, and vice-versa. This is the reason conventional financing up to 95% is more generally favored (each case being considered, property included, on its own merits, without requirements). There are lower discounts chargeable to sellers, minimal foreclosures because of consistent mortgage credit requirements, quicker approval of both loan and property.

Currently one of the greatest problems is the unreasonable and extensive repair requirements for existing properties. More often than not the properties to be financed today through FHA were built originally under FHA standards and often refinanced by insured loans several times, yet today's requirements are based on today's new construction standards. Also, one appraiser will make requirements which, when met, are reinspected by a second appraiser who then makes additional requirements never before anticipated.

37/ Tampa, Florida Board of REALTORS®

38/ Idaho Falls, Idaho Board of REALTORS®

There is inconsistency in valuation. A property can be appraised and 6 months later, after expiration of appraisal No. 1, receive one \$3,000 less. A property does not depreciate in 6 months.

HUD's certification report on wiring, heat, air conditioning, electrical, roofing, and plumbing is supposed to take no longer than 10 days, yet in some cases has not been returned for 30 days or more. Buyers don't wait 60 days or more, nor can sellers, to find out what repair expenses are involved.

The most cumbersome and time-consuming in dealing with FHA is that only one action can be taken at a time. Because there is only one docket of a given case, if that file is in mortgage credit, the order for re-evaluation cannot be made until mortgage credit releases it, nor can HUD make its inspections. A great deal of time and efficiency could be gained by either duplicating the dockets or by departmentalizing the data pertaining to each phase, and when finalized coordinating all data in its master file.

In reference to housing management, I'm assuming the reference is to FHA-owned properties or foreclosures - closer supervision of area managers and their repairs would eliminate delays in finishing repairs after a sale and create closer cooperation with VA in securing VA financing for FHA-owned properties. No FHA-owned property should be advertised as insurable until it is insurable. Also, foreclosures in "as is" price or auction should be offered on a cash basis. This would lower foreclosure holding time by many months and move many properties at less expense to FHA and taxpayers. 39/

C. Weaknesses in the Management Area

The subcommittee, after a lengthy discussion, agreed to submit the following evaluation of existing federal housing programs. Based on our experience we find the following weak points:

- 1) Amount of time it takes to process any application through HUD. At present it takes from one to six years to get a project approved. This can be shortened by taking several steps; for instance, if a developer is applying for more than one project at the same time, he should be allowed to include them all in the same form instead of having to complete a separate form for each. Once a developer's team has been qualified for a project, the same team should not be asked to qualify for the next project.
- 2) Qualification of HUD personnel is very important. Retraining of such personnel should be conducted in a manner that will not slow down the work in the local office; the retraining usually takes from 3 to 6 weeks, and during that time no one wants to take the responsibility until the employee returns.
- 3) Site inspections. There is not enough input from HUD for inspections on site. When the project is sponsored by nonprofit organizations who are not familiar with construction, unless the inspection is thorough the project will suffer in a few years due to poor workmanship. More thorough and better inspection and maintenance of quality standards at the various stages of construction should be required. Inspectors should be well trained and have proper guidelines.
- 4) Management fees. Management contract procedures should be modified to base it on established management competency and not through low bid process. The fees should be on a per-unit basis and not on percentage. The fees to be reviewed every year. At present there are no guidelines on what is included in the management fees. In some projects the manager must furnish clerical help, social services, etc.; in other projects it is not required. We believe the fees should include only the physical and fiscal management of the project and all other social services to be part of the operating expenses. HUD audits of management offices should be made on systematic basis annually or bi-annually. This audit will weed out poor management.
- 5) Supplement payments should be made by HUD on the first day of the month they are due. At present it takes 45 to 60 days to receive it. If tenant vacated, the rent supplement payment can be adjusted the following month. The delay in receiving the supplement payment creates a hardship to make the monthly mortgage payment, specifically for a nonprofit group since they do not have escrow or additional funds.
- 6) Reserve replacement fund. In order to create the correct reserve a list should be published by HUD indicating the economic life of all items. Whenever some equipment has to be replaced, managers should be allowed to withdraw from the replacement fund without delay. At present the manager does not know if he is going to be reimbursed.

7) Rent increases should be allowed as soon as proof is submitted of the increases in operating costs. With taxes increasing, requests for security in the projects, usual increases in other operating costs, sponsor should not be forced to wait a year before being able to submit application for the increase and then wait for six months to get the approval. Any percentage increase should be on market rent and not on basic or established rent.

8) Excess income should be allowed to remain in the project either in the reserve for replacement or a special residual receipts account. This money could be used to upgrade the project. It now goes back to HUD.

9) Some units in every 221(d)(3) project should be rented to local housing authorities under Section 23 leasing program. This will create a better economic mix in the project.

10) Income limits should be reviewed periodically to allow for increase in cost of living. With the income limits being stagnant, you limit yourself to the quality of people you can put in a good area, and the project suffers.

11) Eviction procedure as it now stands is too lenient. Model form lease at present is not strong enough to allow for evictions in court. New leases should be prepared to comply with each state eviction law.

12) The 221(d)(3) rental program requires recertification every two years, and the 236 program every year. Both programs should require recertification every year. Doing it yearly will not allow people to remain in the program when their income is over the limit; at present these people can stay in the program for almost two years.

13) We want to report that in most local areas HUD employees are very good inspecting construction, etc., but other areas do not have adequate people or adequate talented people on the staff. 40/

Our big problem with residential management in Philadelphia is our inability, under present legislation, to collect our rents and/or to get possession of our property when a default exists for nonpayment of rent. Example: it currently takes 30 to 60 days for a hearing, tenant having the right of appeal, another 10 to 20 days before an eviction, and the total cost, if you are a corporate landlord, will be first step to the Municipal Court minimum cost \$125, attorneys' fees, filing, etc. If you go for a forceful eviction, approximately \$225 to \$250 additional cost. 41/

A system should be set up to insure rental housing for the needy that do not have adequate earned income. Management services should be subsidized in this area. A program for training of managers and resident managers for low and moderate income properties should be instituted. Finally, a maintenance counseling and housekeeping program for tenants should also be adopted. 42/

40/ RLC Housing Management Subcommittee

41/ P. J. Meehan Co., REALTOR®

42/ Omaha Real Estate Board

We would urge that FHA get out of housing management, and that it contract management out to professional private companies. 43/

We have a tremendous need for educated housing management. We would suggest scholarships in management and the college level courses in property management be strongly encouraged by HUD in conjunction with HEW. 44/

43/ Oklahoma City Real Estate Board

44/ El Cajon Valley Board of REALTORS®, El Cajon, California

D. Housing Finance Operations

1. In order to make the FHA loan more attractive to both lender and seller, we recommend that the FHA interest rate for 203(b), 207, 221(d) and similar unsubsidized programs be immediately raised to a rate which would make these loans competitive in today's market without excessive discounts.
2. It is recommended that 203 downpayments be lowered and that FHA mortgage insurance premiums be prepaid at the election of the mortgagor in a manner similar to the private mortgage insurers. The MIP on unsubsidized loans should be based on FHA's actual experience with loans of each type so that extremely high losses due to 235 foreclosures not affect the mortgage insurance premium on unsubsidized loans.
3. In order to lower the foreclosure rate on 235 loans, we recommend that in the event of recertification of income which now occurs each year, the term be extended to a two-year period and that the home owner be given 90 days before the possibly increased rate goes into effect. 45/

We recommend that FHA be separated as a mortgage insurance company. We recommend that all subsidy programs be eliminated from FHA and taken over by HUD, or elsewhere in the government if they are retained. We recommend that all FHA insuring offices be removed physically from HUD offices. Let all insuring offices report to one headquarters -- eliminate the regional offices. Redesignate FHA as a mortgage insurance company, instead of as a "housing production agency." The FHA underwrites economically sound mortgage loans; they do not build houses. Staff FHA with competent mortgage technicians.

Our private home building industry has produced such an abundance of apartments in the Oklahoma City area that we now enjoy a vacancy ratio in excess of 20%, the highest in 40 years. We have consistently been able to do an adequate production job without any help other than a stable dollar, FHA, GI, and conventional loans. These loans should not be a subsidy, but should pay their own way as FHA has always done.

The greatest impediment to FHA's full use is the discount, which must be paid by the seller. When you limit the interest rate to 7% in an 8% market, the lender has to either charge a discount big enough to bring the yield up to 8%, or decline to make the loan. We need an interest rate sufficient to bring par, and this can't be done nationally because rates in one part of the country will be higher than in other parts. We need flexibility from area to area. If one region has a surplus of money, they will have lower interest rates. We desperately need to get rid of discounts. We need FHA in competition and as a device to move money from capital-surplus areas to capital-short areas. This cannot be done by private mortgage insurance. FHA alone can give us a national mortgage market. 46/

45/ RLC Subcommittee on Mortgage Finance

46/ Gerald L. Gamble, President, Oklahoma City, Oklahoma

In order to expedite loans, the time limit for FHA approval should be within 7 to 10 days on existing homes. On new properties we have found the detail work has deterred builders from using FHA financing or approval. Therefore I would suggest that the submission of specifications, plans and layouts, etc. be streamlined along with the time required for approval. ^{47/}

Private mortgage insurance is doing an excellent job. We do not feel that in its current stage of development it has the capability nationwide that is needed. We believe that in 221(d)(2) for subsidized housing MMI premiums should not be charged to the buyer. Increase FHA 203(b) program to a loan limit of \$45,000 to \$50,000 with 5% down plus closing costs. ^{48/}

The only advantage to FHA mortgage insurance as presently constituted is in the lower price ranges. The private insurer does not want lower priced loans and tends to be tighter in their qualifying. For example, we can get little credit for a wife's income, generally speaking, with a private insurer. FHA tends to be more liberal in their qualifying. However, FHA tends to think of itself as a social-welfare agency and expects the seller to almost completely recondition the home before they will insure the loan, even if it is unsubsidized. It is my experience that buyers tend to buy a resale home in the condition it is when they see it and really do not expect improvements to be made unless they specifically ask for them. ^{49/}

Since the Maryland usury law and the tight money market are prohibiting the use of conventional insured (MGIC-type) financing, the use of government-insured loans should increase during the coming months. To aid in the sale and processing of these loans, the following policy has been implemented:

1. FHA has returned to issuing conditional commitments (appraisals) in five work days and will process credit approval in three work days.
2. FHA and VA will review townhouse applications for condominiums and PUDs if the council of co-owners submit and have approved the proper legal papers. Previously these townhouse projects were ineligible for government-insured financing unless built under FHA or VA.
3. The VA has informed its appraisers in many instances that their appraisals need to be increased in order to meet the higher prices established in today's inflated housing market.
4. Both agencies have indicated a willingness to consider the wife's income toward prospective mortgage payments when it is apparent that her steady employment and the composition of the family establishes that such income is likely to be reliable in the future. ^{50/}

^{47/} Anegline A. Kopka, Kopka Real Estate, Inc. - Nashua, New Hampshire

^{48/} El Cajon Valley Board of REALTORS®, El Cajon, California

^{49/} Budd Krones, Krones Realty Corporation, Tucson, Arizona

^{50/} Montgomery County, Maryland Board of REALTORS®

A generous supply of housing at reasonable prices will not be available through federally-administered programs until loan discounts are eliminated. Loan discounts cannot be eliminated until such time as loan interest equates with mortgage market return levels. The Secretary has the needed authority to float interest rates to conform with market levels. If he does this, loans can be sold at par. When this happens it will not be necessary to peg housing prices higher to include discount charges and buyers can have the same competitive prices on federally-guaranteed loans that are available to buyers using conventional bank financing. This would make new and resale housing available to large numbers of people who are presently unable to properly qualify for the artificially high prices charged to include discounts or the higher downpayments and service charges of conventional loans. 51/

FHA mortgages are not being used in Midland due to points and time delay. There definitely could be a place for FHA low downpayment mortgages in the community. Mortgage guarantee insurance corporations are making loans in the community but are limited to 10% down. Therefore, lower priced homes with a 5% downpayment are much in demand but not available.

FHA insured loans should be at the same rate of interest as conventional mortgages thus eliminating points and the inflation of market value.

Any program should be administered locally by people who are aware of and familiar with the problems of the area. 52/

The government's role in financing should remain substantially unchanged; however, quality control should be in terms of local building codes with inspections and approvals as a function of local agencies only. 53/

In Nevada, (1) private lenders are limited; (2) there is limited local capital; (3) loan limit and loan ratio should be increased because the maximum is now outdated; and (4) FHA must be the major source of financing. Lack of FHA financing in Nevada would cause extreme hardship to home buyers and sellers. 54/

We propose that the provision allowing the Secretary of Housing to set the interest ceiling be eliminated. Let the interest on FHA loans seek its own level in the marketplace. We feel that this would go a long way towards eliminating discounts that the seller must presently pay in order for the buyer to obtain a loan. These discounts that the seller must pay are presently a great hindrance to the buyer in having a proper selection of housing. As, here again, the seller merely says, "I will not sell FHA!" in any area where he has a choice of financing. The discounts are also a great injustice on the sellers who are forced to pay them in order to sell their houses in areas where other types of financing are not available and the seller has no choice.

51/ James W. Munro, President, Langley-Munro Associates, Inc.
Bringham City, Utah

52/ Dorothy Ribble, President, Midland, Michigan Board of REALTORS®

53/ William C. Vogel, President, Sacramento, California Board of REALTORS®

54/ Gene Nebeker, Executive Vice President, Las Vegas Board of REALTORS®

We further propose that the amortization schedules be extended to a maximum of 40 years. We suggest that the amortization of the loan be removed from the Appraisal Architectural section of FHA and put where it belongs in Mortgage Credit and have 40-year loans available if the buyer's income warrants it.

By increasing the amortization we lower the payment as outlined in the start of this report. This would put many people who would presently have to buy on a subsidized program in a position to purchase without subsidy. Under the present system the Appraisal and Architectural section estimates the term of loan that the buyer will be able to obtain and we find in many cases they arbitrarily cut the loan to 25 years, 20 years or less. The effect of this is to eliminate many people from being able to purchase this home because of the increased monthly payments. 55/

The FHA mortgage insurance program in this area has been a very viable and important instrument in home finance. It is imperative that the FHA continue its role in insuring loans. The 90% and 95% privately insured loan has gained a large section of the market previously administered by government-insured loans; however they are an adjunct to rather than a replacement of FHA and/or VA loans. The private market will not take the risks of the government-insured market.

FHA should return to its role as an insuring agency and socially-motivated programs should be administered by some sister organization, similar to the relationship of the Government National Mortgage Association to the Federal National Mortgage Association. In housing management, both public and federally-insured, the success of such management depends on its being properly funded and locally staffed. Too often large projects, such as 236, are administered by management companies who are located some distance from the subject property. They are unaware of the specific problems each project may have. Management should be local in nature, if possible, using project residents as employees wherever possible, and have a firm collection policy coupled with an adequate maintenance program. 56/

Availability of the high-ratio mortgages made possible by private mortgage insurance fluctuates widely depending upon the economy of the market. The community needs a level housing program which is not subject to the fluctuations of the business cycles through recession which is forced on us when we are subject to the private insurance field. 57/

Permit flexibility of interest rates on insured and guaranteed loans. Combine the mortgage loan procedures, especially in applications and inspections, of VA, FHA, Farmers Home Administration; make possible interim financing for rehabilitation of qualified old homes and direct the poverty area program in the main to rehabilitation; make a place once more for 203(b), now all but in disuse in our area. Extend to small town and rural communities. Perhaps consider negotiable discounts. 58/

55/ Robert E. Wood, Chairman, FHA-VA Committee, Kansas City, Missouri

56/ Allen R. Udell, Vice President, First Investment Co., Youngstown, Ohio

57/ Charles J. McGee, Chairman, FHA-VA Committee, Bucks County, Pa. Board of REALTORS®

58/ Lloyd D. Hinkley, President, Nebraska REALTORS® Association

Because of our 7½% usury ceiling on conventional loans here in New Jersey and the large percentage of our housing stock which is in older urban areas, the need for a revitalized FHA will soon become critical in our State. With savings flows to thrift institutions declining relatively, the cost of money going up and inflationary expectations rising, conventional mortgage money is beginning to be rationed and private mortgage insured financing is virtually unavailable in the northern part of the State. The last FNMA conventional mortgage secondary market auction indicated an average yield of 8.11%. 59/

The mortgage originators should be able to completely process the FHA loan through to insurance - including the appraisal and inspections. 60/

The original concept of a Federal Housing Authority (FHA) which would "insure" mortgages and thus increase the availability of mortgage funds was a sound concept, when applied to the middle income citizen of the country. The FHA insuring program has been most successful in extending home ownership to large numbers of middle income families by allowing them to finance larger proportions of home purchase prices. The result has been great improvements in the housing standards of the average working family. Secondary results have been the accrual of substantial quantities of older, used housing in both urban and rural areas. This housing has been subject, in many instances, to unusual abuse and decay, because of unrealistic ad valorem taxation policies (at the local level) and social problems (racial and crime). During the last 35 years, over 80 authorities or programs pertaining to housing have evolved from Congressional action to be administered by FHA, VA, the Farmers Home Administration, HUD, HHFA, and the Department of Defense. These programs are so numerous and complex that many of our local governments are hiring individuals who specialize in trying to guide local government to the proper utilization of same, and many FHA mortgagees have lost count and contact with the programs, which are no longer popular. It should be apparent that consolidation and restructuring of these 80-odd programs is in order. In this connection, it is suggested that FHA should revert to its original function, as a mortgage insurance agency, assisting middle income families in their quest for home ownership. 61/

What will private mortgage insurance substitute for that provided by FHA? The only way that private mortgage insurance can substitute is to the degree that they can take the same kind of risks that FHA can take. Now, I don't think this is possible under the present procedure because FHA knew what their risk was before they agreed to insure the loan and they measured their risk in the form of an appraisal. Under private insuring they are relying on the lender's appraiser in order to set the upper limits of value. When you do this, you then jeopardize part of your responsibility as an insurer because if, in truth as you do in California, look to the security for the repayment of your indebtedness, then it doesn't do all that good to sit and spend a lot of time underwriting credit when the present mortgagor can be substituted for a new mortgagor and there is no liability to the original mortgagor on a note.

If there were to be a major structural change in the way FHA operates, what organization form would be the most satisfactory from your point of view and why? Put more responsibility on the shoulders of the mortgagee. The mortgagee gets one point for originating the loan and FHA only collects a fee for the appraisal and, of course, the mutual mortgage insurance premium. I believe you can structure FHA so that more of the documentation is done in the hands of the mortgagee and that he has to play a greater role in terms of the processing of the FHA loans. After all, he is the one requesting the mortgage insurance. Let him prove his case, that he had something valid and should be insured by the Federal Housing Administration. 62/

59/ Robert E. Scott, President, Eastern Union County Board of REALTORS®, New Jersey

60/ Omaha Real Estate Board

61/ James H. McMullin, Chairman, Legislative Committee, Virginia Association of REALTORS®

62/ R. C. Farrer, Castro Valley, California

E. Specific Program Comments

The subcommittee believes that the Section 23 leasing program is best available means for solving the problem of problem families. The program insulates the owner or investor from the consequences of renting to problem families in that a local housing authority is responsible for the maintenance and collection problems that are inherent with such families. No property owner would ever hesitate to rent to anyone if he could be guaranteed that his property would be properly cared for and that a fair rent would be paid. 63/

The 235 program is a self degenerating situation.

Due to cost of land 235 neighborhoods were developed in remote areas far from public transportation, employment opportunities, schools, recreation and stores, which made one or two cars necessary for each family. There was no educational program to teach buyers general maintenance of equipment such as air conditioning, stoves, heating systems, as well as costs to operate these amenities which they were unaccustomed to owning. Many of these subsidized loans revert to $8\frac{1}{2}\%$ interest plus $\frac{1}{2}$ of 1% MMI as income increases. It is all but impossible to resell a pre-owned 235, because there is no equity to cover cost of refinancing. Buyers prefer either a new house 235 at lower interest rate, if they qualify for subsidy, or would not buy in 235 neighborhoods under any circumstances, if they do not qualify for subsidy. The high percentage of foreclosures in 235 housing developments indicates the failure of the plan. 64/

Basically, the 237 counseling program is excellent and should be expanded. The strength of the program is, of course, that it allows the poor to buy with a minimum amount of downpayment. The weak points are that the program is inadequately staffed with unqualified people, and (2) there is inadequate counseling for credit, income, maintenance, and home owner responsibilities. We feel maintenance and home ownership counseling should be required for all subsidized housing. 65/

Section 235 was about 95% successful, an enviable figure when you consider the program is a high risk program. The program could be made more effective by the following procedures:

1) Delete income received from public welfare as an acceptable income stream. The great majority of defaults under 235 occurred as a result of people receiving Aid to Dependent Children who were in no position to maintain their homes.

63/ RLC Subcommittee on Housing Subsidies

64/ Ebby Halliday, REALTORS®, Dallas, Texas

65/ Omaha Real Estate Board

2) Make low interest home improvement loans available to both 235 home purchasers as well as other low income home owners living in the inner city. These loans would be provided under the Home Improvement section of the National Housing Act.

3) Provide community counseling services for prospective home owners under Section 235 before they buy a house. 66/

Section 235 and 236 require more and better counseling and buyer qualification. The rise in taxes in our county has caused monthly payments to be increased in these programs. The buyers will not accept this increase and many have abandoned the properties in poor condition to return to their former unsatisfactory housing for a lower price. A portion of these families cannot pay the tax-increased monthly payment. It would appear that they are not willing to spend more of their income for housing, regardless of the quality. They decide upon less quality and the freedom to spend their income as they choose.

We have only one rental program under Section 235 which we classify as successful. The reason for its success is the near-custodial care the tenants and property obtain from the builder. We have many successful examples of the Section 23 program. We believe the success is due to the policies and procedures followed by our local director of the FHA, Mrs. Lila Little. People living under the public housing program we have in this county receive from Mrs. Little a policy of constant education and inspection. We believe that the director is far above average in capabilities. If our director should leave or retire, we feel operation of both our public housing projects and the leased program would suffer a serious setback or fail. 67/

The subsidy programs, both 235 and 236, have worked out as poorly in our immediate area as in other parts of the country. There are, of course, the same general objections to the 235 program prevalent here that prevail elsewhere -- basically that they do not really fill the need of low income families. Few people are happy with the program.

Homes under this program have been built, for the greater part, some distance from the city in areas that do not have good facilities available for public sewer, water, and drainage. They have been built as projects so that the architecture is rather monotonous. The buyer is lured to them because of the subsidy, enabling him to acquire a brand new house beyond his capacity to acquire without subsidy or equity money. Quite often, when the house has served his immediate needs, he and his family walk away from it without taking the trouble to notify the mortgage lender.

The emphasis for years on federally sponsored programs has been placed upon production and increasingly more new construction. I have long felt that this has been erroneous since the incentives of financing, subsidy, etc., have been focused to that end.

66/ First Investment Company, Youngstown, Ohio

67/ Bakersfield, California Board of REALTORS®

One of the problems in this connection has been that FHA has established the selling price above its acquisition cost sufficient to include the cost of rehabilitation and sales expense to a point where such prices are substantially equal to the selling prices of new 235 houses being built in the same area. Obviously, given the choice at the same price, buyers shy away from the used 235 house in favor of the new.

The 236 program has fared substantially better, perhaps because of its limited use in this area. Those that have been erected were located in fairly good neighborhoods which have appealed to more discriminating occupants, notwithstanding that such occupants qualify for the subsidy. The lack of more of such units locally is the result of a very narrow zoning policy on the part of city authorities which generally insists upon multiple dwellings being erected in the least desirable areas of the city regardless of type, quality of the structure, and the income level of those whose requirement is sought to be met. 68/

The Federal Housing Administration was originated in the 1930s as a government agency whose primary purpose was to provide a means of purchasing homes for those whose financial circumstances were below criteria of local lending institutions. Our community has seen the FHA play a major and successful role in assisting such families through loan insuring programs aimed at acquiring decent and adequate housing. To date, the FHA has been the major contributor to a respectable and highly satisfactory living environment for families in this area.

Dating back, we recall that changes in the nation's population status and economy prompted Congress to initiate the Housing Act of 1968. It is this governmental program that provides monetary assistance to lower income households needing to purchase homes; namely under the Section 235 program. The El Paso community has seen this program thus far as the only available means by which low income families can acquire decent housing.

In El Paso the lower income family predominates, therefore the 235 program reaches a broad segment of the population. We feel without doubt that the FHA loan insuring and the 235 programs must be continued in the best interest of this community. El Paso has over 22,000 substandard dwelling units in critical need of rehabilitation or replacement in order to meet adequate housing requirements, one of which made national news in April of this year. This recent tragedy in a tenement-type substandard dwelling unit exemplifies the need for additional housing in this area. FHA operational procedures have been successful and have been directed towards the public interest in the housing field.

Due to the unprecedented success of both the FHA loan insuring and the 235 program, plus the urgent need for additional housing in El Paso, we strongly urge the continuation of both programs. We feel that there is no doubt that the result in this area will be an increase of families doubling up into one dwelling, a non-conforming garage apartment, or other substandard living quarters which are common to this vicinity... Continuing the existing program should give the community and federal government time to implement the proposed Better Communities Act for city revenue sharing. 69/

68/ Silas F. Albert, Grand Rapids, Michigan

69/ El Paso Board of REALTORS®, El Paso, Texas

We suggest to replace the 235 program ownership with the condominium concept where there is centralized maintenance and that there be a ratio as much as 70% of a project being subsidized with as little as 30% without subsidizing in a given development and this to include conversion from existing apartments. We discussed a partial subsidized program covering the maintenance expenses and perhaps a 221(d)(2) program which was exempt from the MMI. 70/

235(i) has been active in Las Vegas since October 1968. In that time, of the 5,906 loans (5300 for new structures) processed in Clark County there has been 401 foreclosures, representing 7% of the total; another 10-15% are in delinquency. In the program the following points were made:

1. There is a tremendous delinquency factor.
2. The program has been abused by all-- builder, lender and real estate broker.
3. Foreclosures cost thousands of dollars and are much higher than normal.
4. 235(i) homes are generally totally unmaintained and in deplorable condition.
5. Foreclosure takes too long and subsequently the property is practically destroyed.
6. Qualifications for entitlement are good, if enforced. Qualifying should be strictly policed.
7. A program for marketing foreclosures is needed. A brokerage commission should be provided for in the program.
8. Concentration is causing downgrading of better areas nearby.
9. Public housing funding in Las Vegas has done a very good job and due to good maintenance programs. 71/

Federal funds for categorical grant programs in the housing field will terminate June 30. Our Board of Directors has formally gone on record commending the outstanding job done by the Stockton Redevelopment Agency in carrying out the rehabilitation on individual homes in our older sections of the community under the 312 program. The first rehabilitation house under this program in the State of California was done in Stockton and hundreds have been upgraded successfully. Not one has been repossessed. The program provides the funds for the agency to combine existing loans on the property (often with 8% firsts and 10% seconds) to be combined with the rehabilitation costs and refinancing under an all-encompassing new loan at 3% for a term of 30 years. In most cases even with \$6,000 or \$7,000 rehabilitation costs the new monthly payments are less than they were before the house was brought up to liveable standards.

In some cases where the property owner makes \$3,000 per year or less, the federal government provided an outright grant for the rehabilitation.

70/ El Cajon Valley Board of REALTORS®, El Cajon, California

71/ Las Vegas Board of REALTORS®

It is our desire to either have this successful program continued under federal grants or to be assured in some way through revenue sharing that the City of Stockton can provide a similar well-run program to assure the continuing upgrading of the community.

Cutting off of this program will not only damage the housing inventory in a community where low-cost housing is scarce but it will create, in our opinion, potentially dangerous social unrest. ^{72/}

Advantages of FmHA over HUD: Developers deal directly with the area supervisors; loans made directly by the agency; offices in reasonable distance; no loan discount fees. HUD has a maximum income schedule based on the number of members of the family. This practically eliminates families without at least 2 children from the purchase of new homes. FmHA has a flat maximum adjusted qualifying income of \$7,000 per year, which seems much more equitable. They are now also able to loan to persons of moderate incomes of \$8,800 per year with more liberal adjustment features, but without interest credit subsidy.

Disadvantages of FmHA: As the Rural Farm and Home Loan Agency they were under-staffed and behind on their work. With 502 to administer, and with a policy of attrition in personnel recruitment, they are tremendously under-staffed. With their primary interest still in farm loans, 502 delays are almost as bad as under HUD. Appraisal of available homes is usually so low as to cut them out of the FmHA market. Appraisal of new homes so low it limits "developers" to those building contractors with suitable lots available to them. At this point it costs too much to build under FmHA loan maximums, and practically eliminates developers without contractors licenses. Under 502 other developers in this county got into the act, and quite a few homes were built. But with administrative delays and problems, most have now dropped out.

Certainly the majority of the low income population hovers around the cities, and is a problem to be handled by state and federal housing authorities together with HUD with all its personnel and facilities. In the vast rural areas of the nation, from our experience, a rural agency such as the FmHA should be far more able to handle rural housing problems. Within the framework of FmHA present organization, under section 502 regulations, rural housing programs, properly administered, seem to us to be the best answer. ^{73/}

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1. 203B is good but why not a straight 5 percent down.
 2. Forget the 235 program-- never was any good.
 3. Do not turn federally insured housing over to mortgage bankers as they have too much control now.
 4. Enlarge the 221(d)(2) program to include- duplexes to \$36,000, 4-BR to \$33,000, 3-BR to \$28,000 and 2-BR to \$23,000. Other areas of the USA could be higher or lower depending upon the values.
 5. Recommend repairs in the appraisal but do not require same. The appraisal should be made on an "as is" basis. If repairs are required, then this amount should be stipulated in the appraisal and could be waived by the buyer, if he performed the repairs.

^{72/} Ed Powell, Executive Secretary, Stockton Board of REALTORS®, California

^{73/} Clear Lake Board of REALTORS®, Lakeport, California

6. Set the points not to exceed 4 at any time. The lender is taking no risk as the loan is either insured or guaranteed by the U.S. government.^{74/}

The following are area problems which I have come in contact with and would appreciate seeing re-evaluated for the good of the community. These problems are related to Title II Sec. 203(b) 1- to 4-family homes, and Sec. 235 home ownership for lower income families.

I. Findings

- (1) Improper appraisals
- (2) Excessive appraised values

Recommendations

- (1) Employ qualified salaried FHA appraisers.
- (2) Circulate real estate brokers who may be interested in performing (on a fee basis) a number of appraisals during the year for the FHA and assign such appraisals to a broker who maintains an office in the immediate area where the property is located. Such appraisals are to be limited per year per broker and would supplement the FHA salaried appraiser. As a control, periodic comparison of an FHA appraisal and a broker's appraisal on an identical property can be made.
- (3) Encourage Realtors to accept and perform a number of such FHA appraisals annually.

II. Findings

- (1) Lack of judgment in counseling delinquent mortgagors
- (2) No attempts to ward off repossession of vacant homes
- (3) Too strict foreclosure procedures
- (4) Unqualified HUD management brokers

Recommendations

- (1) Establish a section/department with qualified personnel with the aim of preventing mortgagors from "walking away" from delinquent or foreclosed situations.
 - (2) Change the foreclosure procedure and/or establish a small loan program to assist these mortgagors to reinstate their mortgages. Make a concerted effort to inform the public that such "help" is available.
 - (3) Require that "approved" FHA mortgage companies accept more responsibility for the type of mortgages created by them.
 - (4) Discontinue the practice of selecting HUD management brokers on a low-bidder basis. HUD to accept management responsibility and the resales should be offered to brokers on an "exclusive" basis. ^{75/}
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^{74/} Long Beach District Board of REALTORS®, Long Beach, California

^{75/} Daniel A. Osmycki, Detroit, Michigan

In response to your letter of April 12, 1973 regarding comments on what the federal government's role in housing should be, the following comments are made:

1. The high land and resale home prices in the Anaheim area have prevented any appreciable subsidized housing programs being executed. Several years ago when prices were lower there was one new tract in East Anaheim that sold under the 235 program. Several foreclosures were experienced but were resold by HUD immediately at a higher price. The area now, however, is below acceptable standards in appearance.

2. It is our opinion that subsidy offers no basic remedy for the housing problem. It is merely a sedative for an inflationary industry and a maladjusted economy. It cures nothing.

3. It would appear that the 235 and 236 programs have not provided adequate housing for low income families. One suggestion as a solution might be the possibility of using housing coupons similar to food stamps which would permit low income families to rent homes or apartments from the private sector rather than government.

There is concern on our part in addition to subsidized housing with the over-reaction of HUD when appraising resale homes under the 203 program. We presently are experiencing HUD's unrealistic requirements regarding painting, driveway repairs, roof certifications, electrical and even replacement of missing light bulbs that have curtailed the practical use of the 203 program in our area.

With the combination of high points and unreasonable requirements by HUD the FHA program is failing a second sector of our society, the middle income group. This action then causes an increased pressure for subsidized housing.

We strongly recommend a review be made of the HUD 203 requirements on resale properties, and that additional training and clarification be provided for the appraisers regarding realistic inspection and appraisals. Reinspection should be made by the same person making the recommendation.

It is also strongly encouraged that top level leadership of HUD be experienced, knowledgeable people from the real estate industry rather than ^{76/} people from outside the profession as has often been the case in the past. 76/

APPENDIX "B"

The local Department of HUD in Columbia, South Carolina has established a Liaison Committee comprised of representatives from related organizations (Realtors®, mortgage bankers, home-builders, etc.) They meet bi-monthly to discuss problems and exchange information. Important information is filtered back down to the Realtor® membership through the individual state boards of directors and similiarly in other associations. We believe HUD should be commended for taking the initiative in many states and we hope this liaison procedure will be expanded throughout the country.

The remarks of Realtor® Robert M. Laird were made available to our Washington Office through Frank A. Burdorf, President of the South Carolina Association of Realtors®.

Mr. Laird reviews some comments of the day's meeting and the Stevenson amendment to HJ Resolution 512 as one important topic:

. . . "Passage of this amendment would cause HUD to be even more demanding - if this is possible - in requiring houses to be checked by various and sundry people before a house is approved for loan purposes, and having repairs made by the owner. We already have a system whereby appraisers list numerous items which must be corrected before a house is approved, even though the need for painting and minor repairs are clearly visible to the buyer and is taken into consideration in the sales price and in the appraisal if the house were appraised "as is". The desire of a purchaser to buy a house with a few minor things he can accomplish himself to be done after purchase is completed at a savings is virtually prevented under current procedures. Houses must be checked by a plumber, electrician, heating firm, and termite firm. Just recently a new requirement has been added. The County Health Department must certify that the septic tank is in satisfactory condition (more about this later). Now there is talk of having City Building Inspectors

check houses to see that they meet City building codes. It is more costly in some cases to have as many as six different people look, including the FHA appraiser, at the house as it would be to pay the cost for minor repair bills should the buyer discover - for example - that a bathtub faucet drips after he buys the house. Even with all of this checking - according to Ernest Begnall - FHA still gets occasional complaints from the purchasers that heating systems are not satisfactory. The reason for this is that furnaces cannot be made to go through their full cycle during the summer when outside temperatures are 90 degrees or above.

"Although FHA first came into being in the late 30's, it has been only in the past five or six years that various requirements that make FHA almost impossible to do business with have been imposed. The simple original function of FHA - that of insuring mortgages on houses considered a good risk has almost been lost sight of in the assortment of programs administered by HUD. As I recall it, no particular problem was encountered when FHA did nothing but appraise a house, in approving an existing house for an FHA loan. The buyer was expected to satisfy himself as to the condition of the house in the same way that he satisfies himself that a house he finances with a conventional loan is in good repair. In the case of a conventional loan there is no reason to add anything to the sales price for the cost of complying with FHA's requirements or for the delays in dealing with FHA. If a house is contracted for before a conditional commitment is obtained for an FHA loan there is no way to know what will be required, nor how much it will cost the seller to comply with these requirements.

"As far as existing homes are concerned sellers who own homes that can be more suitably financed with FHA loans than conventional loans may not have the money to put houses in the shape which may be required by FHA if they are to guarantee the house against defects.

"FHA requirements now are unreasonable, and if they become more stringent, sellers would have to place them in new house condition. Even though improvements are reflected in appraisals the cost may be so much that buyers may take the position that if they are going to pay for a new house they might as well buy a new house. This will depress the market for existing or old houses. With the availability of 95% conventional loans, and the ease in doing business with savings banks as compared to FHA, financing of newer, better-built homes will consume virtually all money available for conventional loans from Savings Banks and mortgage companies. This could leave a large number of older, but livable homes which are virtually

unfinancable if these homes cannot meet FHA's exacting requirements. It can also mean that huge numbers of qualified buyers who cannot afford a new home at present day building costs will either have to qualify for a sub-sistence program which will surely be re-instigated, or they will have to buy a house trailer. It will certainly wipe out or reduce the equity of an owner who purchased a good house ten or fifteen years ago, made monthly payments and maintained his home during his period of ownership and now finds that a buyer cannot purchase his house unless he updates it by spending a lot of money which he may not have if he is an average wage earner. Either such an expenditure would tend to raise the price of the house, if the cost is reflected in the appraisal, so high that a buyer who might be interested can't afford it, or it would tend to reduce his 'net' unreasonably. Either way a buyer or seller loses.

"This is but one part of the problem.

"HUD has reacted to adverse national publicity arising out of the television programs which depicted a 'housing scandal' by imposing a number of silly requirements. Some of these requirements, although unnecessary can achieve some good. That is, when a plumber checks a house that has a faucet that drips he can at least put in a new washer. But other requirements do no good whatsoever and are only imposed so that FHA can 'document its files'.

"The requirement that the owner of a house obtain a certificate from the County Health Department that his septic tank is satisfactory is a case in point. ~~There~~ is, in fact, no way for a County Health Department to know the condition of a septic tank and drainage field which is buried underground merely by looking at the back yard. They are in no position to uncover the septic tank and drainage field. Nor are they in a position to run all the faucets in the house for several hours in order to ascertain that the septic tank drains. As has been pointed out to me by our Aiken County Health Department, a septic tank and drainage field that works in dry weather may malfunction in wet weather so that even if copious quantities of water are run into the septic tank, and results are satisfactory, this does not mean that it will continue to be satisfactory. For this reason the Aiken County Health Department refuses to positively assert that a septic tank is satisfactory, and I don't blame them. They point out that if they approved the septic tank installation in the first place, there is only about one chance in five hundred that the septic tank will require anything except routine maintenance. They further point out that they don't see how the statement they sign can possibly be of any benefit to anybody.

"They are wrong. It helps FHA. FHA can 'document its files' by showing, should a complaint arise later that somebody checked the septic tank or at least looked at the ground over the septic tank.

"Mitch Sutherland and I discussed this matter at length with Ernest Bagnall after the meeting. He acknowledges that septic tanks and drainage fields cannot be inspected. However, he says that there is pressure on the local HUD office to check everything and not take anyone's word for anything.

"Maybe the matter of the septic tanks is part of a larger problem described in the earlier part of this letter. Or maybe it should be treated differently.

"There should be checks and balances in everything. On the one hand we have strong reaction on the part of HUD to adverse publicity and complaints from purchasers which result in silly requirements. There is no counter action by the industry. The Mortgage Bankers Association acquiesce to all requirements however silly. The Homebuilders Association is complacent. Realtors® accept all regulations of FHA as being sacrosanct. We are either going to have to live with these silly requirements or we are going to have to set up such a howl when they are imposed in the form of letters from sellers, complaints from Realtors®, builders, and mortgage bankers, and contacts with Congress that HUD will begin to react to common logic and lift these silly requirements or think the matter through completely before they are imposed in the first place."

s/ Robert M. Laird, Jr.
Owner and Manager
The Laird Agency
Aiken, South Carolina

From: REAL ESTATE TODAY®
July 1973

APPENDIX C

Consumer Protection for the Homebuyer

Consumerism has finally hit the real estate business and the Realtor® now has the opportunity to serve the public in yet another way—by offering consumer protection to the homebuyer. What are the advantages of selling a home with a service contract? What kinds of programs are available at the moment? What is the future of the consumer protection movement in real estate? These and many other questions are discussed in the following article.



One of the products of the 1970s is the consumerism movement and one of the most recent rallying points for consumer advocates is protection for the buyer of real property. Consumer spokesman Ralph Nader, in a recent speech in Arlington, Virginia, said: "The housing issue is going to be in the '70s what the auto issue was in the '60s."

The professional in real estate today has an opportunity to exert a strong influence on the type of consumer protection programs that develop; and it seems only natural that the broker, with his unique relationship to builder, seller and buyer, should play an active role in fulfilling the needs of the consumer.

Many real estate brokers have already felt the pressure from buyers to provide a guarantee against defects in new and resale housing. It is the responsibility of the broker to arrange for such a guarantee, either through existing consumer protection programs or by taking

the initiative to develop a new plan. Since most brokers seem to prefer a privately sponsored program over a government one, it is to their advantage to provide the needed protection in whatever way possible.

A number of consumer protection programs have been put into operation within the last two years by homeowners' organizations, builders and individual Realtors®. All of these programs can benefit the broker financially and can aid him in his service to his clients and the public. Several of these plans are discussed below.

A number of brokers are now offering buyers of previously owned homes a one year "no-cost" repair and replacement service contract through Palace Guard, a division of American Homeowners Association, Inc., of Milwaukee. According to Ira Safer, founder and president of Homeowners,

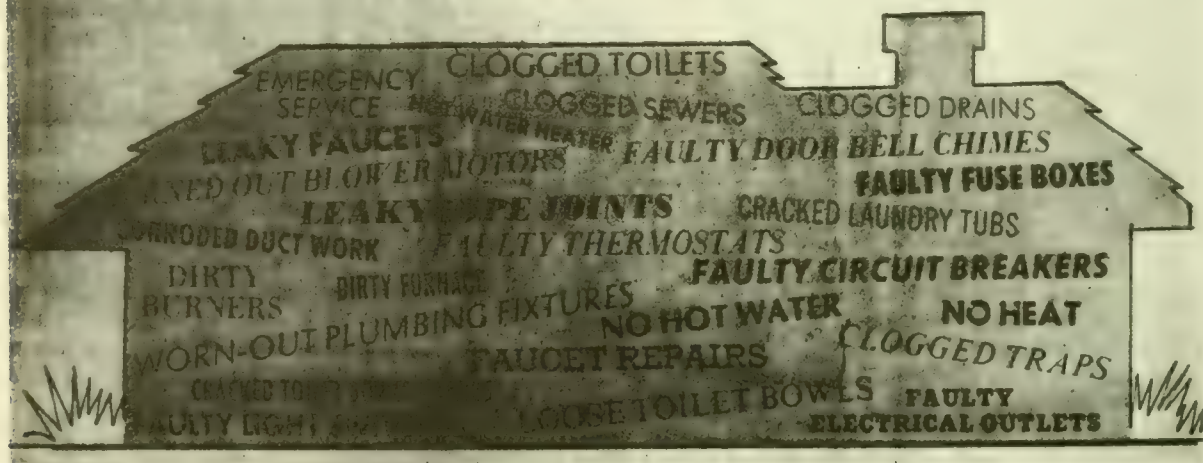
"Consumerism has finally hit the real estate business. Up to now, the consumer who bought a home which was not new had no protection against failure of the home's major equipment. Our national offering of home service contracts has changed that."

Under the Palace Guard program, the buyer automatically receives a service contract when he purchases a Palace Guard-ed home through an authorized broker. The contract provides for complete maintenance, repair or replacement of major home equipment which fails due to normal wear and tear for the first full year of occupancy. Those systems covered by the policy can include:

1. Central heating systems
2. Plumbing fixtures
3. Plumbing systems
4. Electrical systems
5. Hot water heaters
6. Duct work

The cost of a one-year service contract on a \$30,000 home is \$165 or about \$14 a month. Either the buyer or broker pays for the

**When you buy a home .:.
It doesn't have to be haunted to come with
a lot of nightmares — LIKE . . .**



Consumer Protection

contract. For a small fee, a buyer may purchase additional coverage for air-conditioning units, oven ranges, garbage disposals, dishwashers and water softeners.

Palace Guard is not an insurance program but a service contract. No inspection is required prior to coverage. There is no maximum liability clause, no standard deductions and application for renewal of the contract can be made by the homeowner at any time prior to the end of each year. It is not required that a piece of equipment be in operating condition at the time of purchase in order to enjoy coverage.

Palace Guard contracts have been available for more than a year and can be obtained through participating real estate firms in over 20 states. Contracts are offered to a firm on an exclusive basis for the area it serves.

Before Homeowners agrees to provide contracts through a broker, it first determines if arrangements can be made in the area to efficiently service all of the homes that would be covered. Fully-bonded and insured professional contractors are hired by Homeowners to handle repairs and an area administrator, frequently a local insurance adjuster, is appointed to insure that the program works effectively.

Three real estate firms offering the Palace Guard service contract are Gribin Von Dyl, Realtors® of Southern California, who just adopted the program this spring, Real Estate One of Detroit, who has offered the contract for over a year and Thorsen, Realtors® of La Grange, Illinois, who have had the program since last fall. Ira Gribin of Gribin Von Dyl, Daniel R. Williamson of Real Estate One and Joe F. Hanauer of Thorsen discussed with **real estate today** why the decision was made to adopt this consumer protection program.

Ira Gribin believes that his firm's decision to offer a protection plan was "one of the most important in its history." Gribin heard about Palace Guard at the NAREB Convention in Miami in November 1971. After 14 months of extensive research on the program, Gribin Von Dyl announced on February 1, 1973, that all buyers of Gribin Von Dyl Palace Guard-ed homes, including the buyers of other brokers who sell a Gribin Von Dyl home, will be given a service contract.

The entire cost of the service is carried by the real estate company. Gribin said that his firm hopes to increase their listings. In addition, any buyer who obtains a home through the firm which is listed by another broker will have the opportunity to obtain a contract at his own expense.

Gribin believes that the service program is in "the finest tradition of consumer protection." He feels it is "the beginning of something that's needed in the real estate industry and especially in the previously owned home market."

Gribin contends that the plan will "benefit buyers and sellers because it gives them the kind of

protection long overdue in our industry." There has never before been a way for the individual to protect himself against major repair bills in a home. Not only will the service repair the home's systems, but it will also maintain and replace these systems. Beginning with the effective date of the contract, those systems in the home covered by the contract are inspected, cleaned and adjusted, trouble spots are detected and the systems brought up to prime working condition. Depreciation in the home's resale value, a vital concern to a buyer, should be overcome with these services.

There are numerous advantages to being a seller of Palace Guard-ed homes according to Gribin. To begin with, the seller is relieved of potential liability if something happens to the home during the first year. If any problems should arise, the program will take care of service, repair and replacement. A buyer protection contract will also be a powerful asset when selling the home and should result in a faster sale. It is also probable, Gribin said, that mortgage lenders will make a higher loan on property that has a service contract. Gribin believes that a buyer protection plan gives the broker a "special edge in advertising a home," especially since so many buyers are warned against resale housing. And finally, he feels that the reputation of the broker is strengthened, since by offering a service contract he is showing the buyer that he has "good faith" in his homes.

Gribin also pointed out that nothing can be better for a firm's public relations than offering a homebuyer's protection plan. Gribin Von Dyl has arranged for extensive advertising in newspapers, on radio and television and the response has been extremely encouraging.



A pin designed for Palace Guard promotes the theme of security and well-being.

Real Estate One holds an exclusive contract in the Metropolitan Detroit market area for Palace Guard Home Service contracts. Mr. Williamson said that his firm considers the possibility of offering a consumer protection contract as a new and progressive way to market used homes.

Williamson explained that his company was interested in a consumer protection program because in the spring of 1971, the Detroit office of HUD instituted requirements for city inspections of all housing sold with FHA financing. At the same time these new requirements were enacted, the local HUD office began to talk about requirements which would cause the sellers of used homes to place 10 percent of their proceeds in escrow for one year as a warranty to cover latent defects in the property which was sold.

Through the efforts of the Metropolitan Detroit Council of Real Estate Boards, this proposal was stopped before it was put into effect. According to Mr. Williamson, Real Estate One was very concerned about the possibility of such a requirement because it would have had an adverse effect on the sale of lower-price used houses. But the concept of a used house guarantee was planted in their minds.

An announcement of the firm's plan to offer Palace Guard contracts was made to the sales staff in March 1972. In order that all of their listings can be offered with a contract if purchased through one of their sales associates, the company pays the total cost of the contract from their normal sales commission. This is "taken off the top" so the cost is shared with the sales associates proportionately.

Real Estate One's servicing problems with the Palace Guard staff have been very slight. As a result, they expect to increase their buying referrals from satisfied customers. "Each time a buyer receives good service on his contract," Williamson said, "we hope that he will think of us when his friends question him about a company to serve his real estate needs."

Williamson could not yet tell how many owners will renew their contracts. Of the 1,000 contracts the firm purchased in 1972, most are less than six months old. He does think about 40 percent will renew during 1973. Mr. Williamson said that a smaller number of buyers purchased the option contract for air-conditioning units, oven ranges, etc., than he thought would. He pointed out that this part of the program was started about six months after the initial announcement and perhaps the number of option sales would pick up after it is better publicized.

Williamson believes that in the years to come more protection for homebuyers will be required by state and local governments, through pressure brought on them by consumer protection groups. "Hopefully," Williamson said, "the action of brokers, working with such firms as Palace Guard, will forestall governmental action and leave control with the industry. In this way, we will continue to provide more and more reasons for people to do business with their local brokers."

Thorsen, Realtors® now has an exclusive in the Chicago area for the Palace Guard Service contract. Joe Hanauer said that a program which "minimizes the concerns for the homebuyer about the quality of home he purchases" has increased his company's sales in numerous ways. The obvious contribution, according to Hanauer, is that it attracts buyers by assuring them of a "worry free" transaction. Equally important, however, is that the program has become a listing tool for Thorsen since it enables the firm's salesmen to illustrate to sellers that a buyer protection program means heavy customer traffic. The salesman emphasizes that with Palace Guard, buyers "no longer make low offers based on their worries about the old furnace or other systems."

"Palace Guard-ed Home"

No Cost Repair or Replacement Protection for the Home's Major Equipment

Car bumper stickers advertising the Palace Guard program are available to brokers who offer the repair and replacement service to homebuyers in their area.



Consumer Protection



A Home Shield decal, when displayed on a window or door, is an excellent advertisement.

Hanauer also believes that a consumer protection program, such as Palace Guard has given his firm's salesmen something new to talk about. "The salesman," Hanauer said, "who has been on the firing line for some period of time, seems to be more 'turned on' because he has a new sales tool he can use when cold canvassing."

Realtor® Donald L. Taylor of Taylor Real Estate, Artesis, California, has developed his own buyer guarantee program. Within 10 days after the escrow closes on a home purchase, the buyer can ask Taylor's firm for up to \$100 for repairs on the property. "We pay the money out of our commission," Taylor said, "with no questions asked and no proof required. We believe in the honesty of the individual as he believes in our honesty."

No specific utilities are covered by the guarantee. The \$100 can be used for whatever repair or replacement the buyer feels is necessary. Servicing arrangements are made by the individual home-

buyer. There are no provisions for the guarantee included in the buyer contract. Taylor labeled the guarantee a "standing offer" and promotes the program through his advertising.

Taylor's motivation in underwriting a buyer protection plan was primarily economic: "I wanted to increase my profit through more sales." But he emphasizes the value of such a program to the homebuyer as well. "We felt it was unfair for the buyer to get stuck with repairs that were not his fault and that no one was aware of." His sellers also profit from a buyer guarantee, Taylor believes, since it creates more buyers for their homes.

As for the future of consumer protection for the homebuyer, Taylor feels that "innovative brokers will have to create it; those who don't will be forced out of business by their competition."

While brokers are working through Palace Guard and other privately underwritten programs to provide protection for buyers of resale housing, a plan is presently under study by the National Association of Home Builders that will benefit buyers of new housing. NAHB President George Martin said the increasing consumer demands for more protection has convinced him that the creation of a multi-year, new home warranty should be the priority goal of his term. The Association asked Eugene Gullledge, former assistant secretary of HUD, to conduct a feasibility study for a warranty insurance policy.

Both Martin and Gullledge recognize the value of existing builders' warranties. What they feel is needed now, however, is a "national warranty program administered on a national basis" for a longer period of time than is presently offered. Gullledge stated

that while many builders have not voiced open support for such a program, the very fact the Association asked for the study shows "concern and interest."

The British warranty system, established by England's National House Builders Registration Council, is the model for the NAHB program. Put into effect four years ago, the NHBRC's plan was built upon a similar system that had been in operation for 25 years. Approximately 99 percent of all homes built in Great Britain have the warranty.

The Council's program requires the builder to provide a two-year warranty against major defects in all homes built to Council standards. Then, for an additional eight years, a private corporation supplies protection to builder and buyer for repair costs for defects in a house's "load-bearing structure." An arbitration service set up by the Council successfully resolves 98 percent of all disputes arising over repairs.

If a builder is financially unable to handle the repairs, the insurer takes over. If a builder is unwilling to make repairs, the insurer arranges for the work to be done. The delinquent builder is then denied the right to obtain more insurance. Martin pointed out that the policy also "protects the buyers in cases where the builder goes bankrupt or disappears."

The cost of the warranty, arbitration and bankruptcy insurance is paid for by the builder. An assessment amounting to less than 1/4 of 1 percent of construction costs, or about \$28, covers these expenses. Gullledge could not say exactly what the expense for a similar program would be in the United States, but he is sure it will be a "modest amount, perhaps \$50."



American Home Shield guarantees the buyer fool-proof home protection. He will have nothing to worry about when it comes to his vital home systems. That's because American Home Shield—a reputable, publicly-owned company—has its own staff of highly-trained technicians and a large fleet of radio-dispatched trucks. American Home Shield is always on the alert to give customers professional service within 24 hours. 1-hour emergency service night or day, five-year maintenance inspections, and so much more!

American Home Shield puts your house at the top of the list — helps you sell faster at a higher market price!

American Home Shield's Homeowner's Protection Plan makes your home more valuable and easier to sell.

WHY?



You or your purchaser will never have to pay one single repair bill or any charges for parts and labor for an entire year no matter how frequent or extensive the repair! And any replacements that must be made are unconditionally guaranteed to be equal to or better than the replaced units.



You're actually giving the purchaser a priceless gift when you sell him an American Home Shield guaranteed home. With the transfer of title to the home, the American Home Shield guarantee may also be transferred. What's more, the new owner will have the right to renew this policy each year.



You can offer the buyer a one-year-guaranteed trouble-free home! For one small yearly fee, American Home Shield will give you or your buyer a 365-day-a-year guarantee on the electrical, plumbing, heating and central air conditioning systems of your home. These systems will be serviced, maintained, and repaired or replaced at absolutely no cost to you or your purchaser for a period of one year.



The American Home Shield Protection Plan comes with an unconditional money-back guarantee. This means that if you or your buyer are not completely satisfied with the service, you may cancel at any time and receive a full refund for the remaining months of the contract!



American Home Shield can make your home more marketable today! You can deal with American Home Shield direct or through one of the fine real estate brokers who make this service available. American

Home Shield offers its service through the best most reputable real estate brokers in the area.

Simply call American Home Shield or the name of the real estate broker on the inserted card, and a Representative will be at your service to answer any questions you may have about this remarkable new way to help you sell your home faster—at a higher market price! There's no obligation on your part.

A brochure printed by American Home Shield outlines the advantages of a homeowner's protection contract for those who are selling their home.

So far the only problems with the British policy have been anticipated mechanical ones. Parliament and the British press have been highly impressed with the warranty, according to Gullledge. Builders, buyers and brokers alike feel it is "to their best advantage."

Gullledge's feasibility study, when completed, will be presented to the board of NAHB. The board must then decide on what the warranty should say, capitalization, tax vulnerability and who the owners and directors of the program will be. Martin said a private insuring corporation may be formed, with interests sold to mortgage bankers, mutual savings banks and suppliers.

Gullledge feels that there are certain advantages to a buyer protection program initiated and directed by Congress or the state legislatures. For one thing, such a program would supersede state and local regulations and perhaps result in a more uniform coverage. But Mr. Gullledge feels that the disadvantages of a warranty initiated by a legislature are also very real. There is the danger of politicians setting unrealistic demands for the program—demands which cannot be fulfilled. If the program folds through failure to meet the requirements set by the governmental body, the creation of a new plan might very well be prohibited. It would seem that the ideal buyer warranty should be privately sponsored and publicly endorsed.

A publicly owned corporation in Paramus, New Jersey, offers repair-maintenance services to both the new and the resale home buyer. David T. Smith originally organized American Home Shield in 1972 to provide a guaranteed fast and professional repair service to individual homeowners on an annual contract basis. In February 1973, Smith expanded his program to give "complete customer service" to builders, developers and real estate firms in the state of New Jersey.

Consumer Protection

Smith came up with the idea for Home Shield after many frustrating attempts at getting repairs for his own home. On a winter night when his heating system broke down, he made at least a half-dozen calls for help and got no results. He decided there had to be a better way and found the important backers to agree with him. Initial financing for Home Shield came from the Paul Revere Life Insurance Company.

Home Shield will contract to repair or replace all mechanical units in a home including plumbing, heating, electrical and air-conditioning. Painting, cabinet work, carpentry and roofing is available as well. A broker, builder or individual homeowner may contract for whichever options of the customer-servicing program he chooses. Smith's 15 radio dispatched trucks are fully equipped as traveling workshops. His crews carry an inventory of spare parts and are on 24-hour service call, 365 days a year.

Before a Home Shield contract is issued, the company sends an inspector out to the home. If major

repairs are needed, the inspector will tell the owner what the charge would be for the repair work. If the owner chooses not to have a unit repaired, he can still get coverage for all but that item. The company will generally absorb the cost of any minor repairs.

A number of builder-developers in the state have made arrangements with Home Shield to handle all of the home repair, maintenance and servicing covered by

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Word where prohibited is restricted to above.

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Donald Taylor uses direct mailing advertisements, such as the one shown here, to publicize his buyer repair guarantee. Taylor emphasizes that the guarantee is free to buyer and seller.

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\$43,900 ONLY FOR THE DISCRIMINATING HOME-BUYING FAMILY!

This beautifully located raised ranch of brick and frame is the ideal home for your family! Besides being centrally air conditioned, this home has a lovely living room, 3 cheerful bedrooms, 2 baths, well-planned kitchen with built-in, and separate dining room. Basement with carpeted recreation room, 2 car attached garage, cyclo-sa-loned yard. Just a very short walk to grade school. Don't sell your family short by not seeing this one! Call 948-4400.

\$29,900 SHARP! SHARP! SHARP!

This six room ranch is neat as a pin and ready for your family right now! Carpeted and draped living and dining rooms, 3 cheerful, carpeted bedrooms, ceramic bath with vanity. Step saving kitchen, utility room. Carpet with storage area. Lovely yard for the young ones to romp around. Just 1/2 block from grade school. This home is priced to sell quickly, so don't delay. Call 948-4400.

\$33,900 TREAT YOURSELF

to this charming and immaculate aluminum bi-level. Upon your inspection you'll find a very comfortable carpeted and draped living room, 3 airy bedrooms—one carpeted and two with lovely oak floors. Ceramic bath with vanity, well planned kitchen with built in oven and range, carpeted dining room. Basement with recreation room. Tool shed included. Don't cross this one off your list till you see it for yourself! For an appointment Call 948-4400.

BUYER PROTECTION

\$44,500 BRICK RANCH IN NORTHWEST HINSDALE

Custom built home in one of our finest areas. Entertainment sized living room and dining room, oak cabinet kitchen has built-in oven & range, two sized bedrooms, full basement and attached garage. Centrally air conditioned. If you like quality, you'll love this one. Call 323-3450.

\$159,900 ESTATE IN SOUTHEAST HINSDALE

Magnificent 11 room English style residence in the best Hinsdale location. This gorgeous Italian stone and cypress 2 story is crowned with an all utility room and all of this is set on a beautifully landscaped 1/2 acre site. 5 bedrooms, 3 1/2 + 1/2 baths—completely new kitchen and separate breakfast room. Large living room with fireplace, 2 car attached garage, central air conditioning, first floor den, beautiful formal dining room, organic rec. room with fireplace. This must be seen by discriminating buyers. CALL 323-3450.

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"No Risk Home!"



Buyer Protection
for the Major Systems
of Your Home!

\$36,500 EXCEPTIONAL RAISED RANCH

Of brick and aluminum construction—just a year old! Lovely carpeted and draped living and dining rooms, 3 parquet floored bedrooms, ceramic bath, paneled kitchen with stove. Full basement with recreation room roughed-in with wet bar. 2 car attached garage. Walking distance to grade school. An exceptional home for exceptional people! Phone 948-4400.

\$57,500 IMMEDIATE POSSESSION

Can be yours with this charming brick 2 story. Ideally located, this fine home features carpeted living room with natural fireplace, formal dining room, 4 well placed bedrooms, 2 ceramic baths and a paneled rec. room with fireplace. Better act quickly on this one. CALL 323-3450.

Now you may have the benefit of a Palace Guard No-Risk One Year Home Service Contract on the home of your choice. This comprehensive plan provides FREE replacement or repair on the major systems of your home including central heating, duct work, electrical and plumbing systems, plumbing fixtures, hot water heaters and more. For more information on our Buyer protected homes call your local Thorsen office today.

\$33,900 1 1/3 ACRES!

Of tree-studded grounds surround this tidy 4 bedroom Cape Cod. Rich paneling and beam ceiling add a cozy note to the living room. Efficient kitchen has ample cabinet space, stove, refrigerator and separate breakfast room with a view. The large enclosed porch, den and like-new garage are sure to please. A "NO RISK" home covered by a one year Palace Guard Service Contract providing free replacement or repair of the major systems and equipment in this home! A unique property! Call 355-3500 and see it today!

\$64,500 A BIT OF NEW ENGLAND

Style and charm are translated into this delightful Colonial located just a brief stroll to schools and private swim club. Sensible stone entry leads to richly carpeted living room and formal dining room. Dream kitchen boasts loads of cabinets, every modern appliance and sunny breakfast nook. Paneled 1st floor family room with natural fireplace. There are 4 twin-sized bedrooms, 2 1/2 baths, and full basement finished with 28' carpeted rec. room. Central air conditioning, double garage, private patio and extra galore! Be first! Call 355-3500 now!

\$55,800 HAPPINESS FOR SALE

New center-hall Colonial on a roomy 96 site located in an area of other fine homes. Gracious living room and formal dining room have quality wall-to-wall carpeting. Work saving kitchen with plenty of beautiful wood cabinets, all appliances, and breakfast space for all! The large family room with natural fireplace, convenient utility room and half bath are all on the first floor. Upstairs are four twin-sized bedrooms and two ceramic baths. You'll like the full basement, double garage, and the attractive brick and cedar exterior, and the hill-top view. Come see it! Call 355-3500.

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"The Property People"

Thorsen, Realtors® believes that Palace Guard service contracts are an invaluable sales incentive and advertises the program along with the company's listings in the newspaper.

Consumer Protection

their buyer warranty. Smith believes that by relieving the builder of these responsibilities, Home Shield relieves them of the "biggest after-sale headache."

An added value to the builder is the computer-aided record service maintained by Home Shield. A builder receives frequent read-outs that define defects in major repair or maintenance on his projects. If his crews are doing sloppy work, it will show up almost immediately on Home Shield's computer reports.

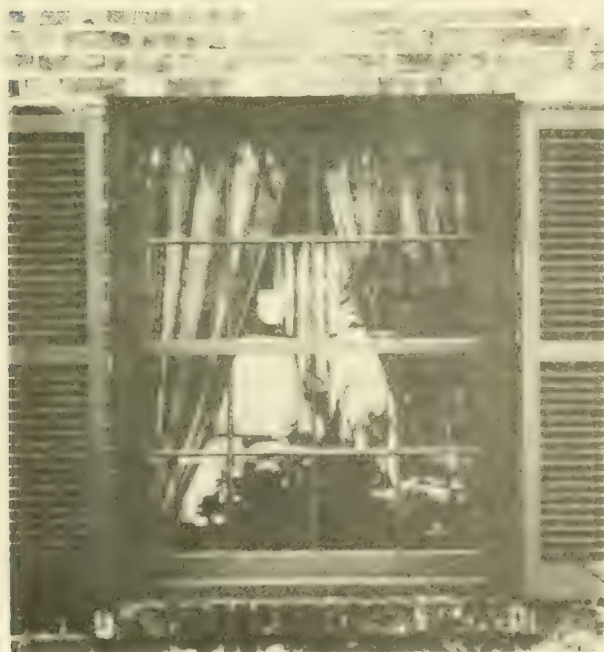
What about the value of Home Shield to the broker? Several New Jersey real estate firms have signed up for the program and offer the service as part of their sales contract. Smith feels that when the service is provided, the broker is assured of a quicker sale at a better price because the prospective buyer is given "peace of mind" about possible repair costs.

Home Shield coverage offsets the built-in distrust people have when they inspect a used home. A broker can also stress that a house covered by Home Shield will have a higher resale value than other houses: the bi-annual maintenance inspections help keep everything in working order. Finally, according to Smith, the broker's reputation in the community as an honest salesman of "quality housing" is enhanced when he makes Home Shield available to the buyer.

The price of American Home Shield coverage for a new house is usually paid for by the builder for the first year. When a Home Shield policy is offered by a broker, the cost is usually tacked onto the price of the house. Price is determined on the basis of an inspection of the home and the probability of repairs for the items covered within the contract period. The annual rate for a typical 15-year-old, eight-room house is about \$190, including two free "preventative maintenance" inspections a year. This cost is inclusive of all expenses for repairs, maintenance or replacement of those items covered in the contract. All contracts are renewable indefinitely.

So far, American Home Shield services about 3,000 homes in New Jersey and Rockland County, New York. Plans are presently underway, however, to expand into Florida, Arizona, California and Texas.

Consumerism is here to stay. While consumer protection in housing is just getting underway, the pressure from homeowners to obtain a service guarantee will increase greatly in the next year. Now is the time for the Realtor®—with his unique position in the housing market—to consider taking the initiative in developing a comprehensive consumer protection program. Several programs already exist which can be adopted by the broker or used as models for other plans. Not only will the broker help the homebuyer by taking an active role in the consumer protection movement, but he will help himself as well. □



Save Chicago's landmarks

In an effort to overcome the economic forces that have been destroying famous architectural landmarks in downtown Chicago, the U.S. Department of Interior is about to propose the creation of a "national cultural park." The Interior Department plan will require a joint city-federal effort to provide economic aid to landmark owners and establish standards for building preservation.

Destruction of the Garrick Theater, which was designed by Louis Sullivan, prompted a study by the Department on how to save other examples of the "Chicago School" of architecture. The government is expected to institute a plan devised by John J. Costonis, a professor of law at the University of Illinois. Costonis' plan would permit a landmark owner to sell his rights under zoning laws to construct more floor space on his site. Another developer would be allowed to buy the rights and build on another site—exceeding that site's zoning limitations by the amount of the purchased rights. Or, the unused zoning rights could be acquired by a "rights bank," which could then sell the rights at a later date.

As a result of selling his zoning privileges, the value of the property would decrease and the owner would receive a reduction in his tax assessment. Thus, the owner of a landmark building would have a double incentive to retain the historic building: he would be paid for unused zoning rights and his real estate taxes would be reduced. This emphasis on dollars-and-cents in preservation has replaced the old approach of idealistic speeches and dramatic pleas.

The Interior Department already has authority to enter into an agreement with Chicago under a 1935 law empowering the Department to preserve nationally significant buildings. This law allows for Congressional funding if the city will agree to take certain prescribed steps to make the overall plan work.

Twelve buildings are expected to be protected by the Department's plan, among them the Carson Pirie Scott & Co. building, the Auditorium Theater and the Rookery.

Used home sales up

The index of existing home sales volume put together by the National Association of Real Estate Boards showed a 10 percent increase over a record 1971 volume in the fourth quarter of last year. Year-end sales prices were up an average of 9.5 percent to \$27,290—the largest increase in a decade. More than 40 percent of the homes sold were priced at over \$30,000.

Homes selling for less than \$15,000 are a vanishing sector of the national market, according to the Association. In the fourth quarter of 1972, these homes made up only 11 percent of existing home sales in the United States. This compares with nearly 14 percent in 1971 and 19 percent a year earlier.

The nation's least expensive used homes and the year's smallest price increase are in the Midwest. The average price was \$23,600, a 5.5 percent increase over 1971. Just under 30 percent of all the used homes in the Midwest cost less than \$15,000.

The most expensive homes are in the Northeast, with the West in a near-tie. Average prices are \$29,200 and \$29,100 respectively. The West showed the greatest increase in prices over 1971 with a rise of 10 percent.

New housing concentration

More than a quarter of all new housing units authorized by permits in 1972 was concentrated in California and Florida, according to the Bureau of the Census. A preliminary report issued by the Bureau showed that of 2,150,000 units authorized for the United States in 1972, 562,000 were in these two States. Florida has a total of 282,000 and California had 280,000 buildings authorized. Other states with large numbers of new units were Texas, with 128,000 units; New York, with 91,000; and Ohio, with 85,000.

Nation's largest mobile home park

The biggest mobile home park in the United States is now in its first stage of development in Sun Lakes, Arizona. Unlike most parks, occupants of the \$75 million planned community will be required to buy and hold title to the land on which they locate their mobile units. The initial development of 625 acres will contain 2,500 sites. Lot prices range from \$5,700 to \$12,000 for the average lot of 7,410 square feet. Facilities at the park include an 18-hole executive and a 9-hole par three golf course, 25,000 square foot clubhouse, two-level heated swimming pools, fishing lakes and tennis courts. No more than four units will be permitted per acre.

Excerpt from statement of J.L. Robertson, Vice Chairman
of the Federal Reserve Board, to the Senate Banking and
Currency Committee on Truth-in-Lending legislation (S. 5)
May 10, 1967

...

Exemption of First Mortgage Loans

The Board recommends that the bill be amended to exclude first mortgage real estate loans, on the ground that there is already reasonable disclosure in this field. The first mortgage contract usually specifies the interest charge in terms of annual percentage rate on the outstanding balance, and full details of one-time costs are customarily given, in dollars and cents, at the time the loan is closed.

The typical first mortgage loan has an original maturity of 20 or 30 years, as contrasted with much shorter maturities for consumer installment credit. This fact, and the fact that most first mortgage loans are repaid well in advance of the original maturity, lead us to conclude that disclosure requirements developed for relatively short-term credit are inappropriate for first mortgage loans. In the first place, to require that the annual percentage rate be recomputed to reflect costs incidental to the extension of credit would involve particularly troublesome questions in first mortgage lending because of the number and variety of the costs assessed at closing, many of which would be incurred, in whole or in part, by a prudent cash buyer where no credit was extended. Second, while it would be possible to spread discounts and other credit-related costs over the life of the contract as a part of the annual rate of finance charge, we feel that this might tend to mislead the borrower. Such charges are in the nature of "sunk cost" and are borne in full by the borrower whether the loan is repaid in 1 year or 30. Third, to require disclosure of total dollar finance charge, including interest, payable over the whole life of the contract, might be more misleading than helpful. As has been pointed out in these hearings, the present value of a dollar of interest to be paid 20 to 30 years hence is substantially less than one dollar, and relatively few first mortgage contracts appear to be carried all the way to maturity.

Excerpt from statement of Jeffrey M. Bucher, Member,
Board of Governors of the Federal Reserve System
before the Subcommittee on Consumer Credit of the
Senate Committee on Banking, Housing and Urban Affairs
May 17, 1973

...

Closing Costs

...

At present, the Act requires disclosures to be made "before the credit is extended." The Regulation attempts to be more specific by requiring that disclosures be made prior to "consummation" of the transaction, which is defined as a time when a contractual relationship arises between the parties. In some real estate transactions, "consummation" may not occur until closing, and it is at that point, for the first time, that the prospective borrower receives his disclosures. It is generally believed that disclosures at closing in such a complicated transaction do not give the consumer an adequate opportunity to use them to assess the terms of the transaction. The Board has outstanding a proposal to require disclosures 10 days prior to closing. While the comments on the proposal indicate that a fixed 10 day period is impractical and burdensome to both creditors and consumers, the Board supports the concept of early disclosure in real estate transactions.

Under the Act, a statement of "closing costs" is not presently required to be given with the Truth-in-Lending disclosures, unless such charges are financed-- i.e., not paid in cash at the time of closing. Thus even if a pre-settlement disclosure rule were adopted under the present statutory scheme, it would still not meet the Commission's concerns. The Board indicated in its Annual Report that in order to be more meaningful to the consumer any disclosure prior to settlement should also include "closing costs" and it supports the concept behind this proposal.

The CHAIRMAN. Next is Mr. James G. Schmidt, chairman of the Federal Legislative Action Committee of the American Land Title Association. Mr. Schmidt, if you will come around we will be glad to hear from you.

STATEMENT OF JAMES G. SCHMIDT, CHAIRMAN, FEDERAL LEGISLATIVE ACTION COMMITTEE, AMERICAN LAND TITLE ASSOCIATION, ACCOMPANIED BY WILLIAM J. McAULIFFE, JR., EXECUTIVE VICE PRESIDENT; THOMAS S. JACKSON, GENERAL CONSULTANT; AND WILLIAM T. FINLEY, JR., CONSULTANT

Mr. SCHMIDT. Mr. Chairman, my name is James G. Schmidt and I am the chairman of the Federal Legislative Action Committee of the American Land Title Association. With me today are, on my right, William J. McAuliffe, Jr., the executive vice president of ALTA, and on my left Thomas S. Jackson, the association's general counsel, and William T. Finley, Jr., counsel to the association.

Our prepared statement, which I request be entered into the record as though delivered orally in its entirety, explains in great detail the reasons why ALTA believes that the most effective way for the Federal Government to deal with the problems and abuses that may exist in the real estate settlement process is by means of antiabuse, full disclosure, and other reform provisions along the lines of those contained in S. 2228, that was introduced last week in the Senate, or along the lines of chapter IX of H.R. 16704, that was overwhelmingly approved by the House Committee on Banking and Currency last year. The approach adopted in these legislative measures is to deal directly with the underlying problems that exist, rather than to impose an unfair and very burdensome scheme of Federal rate regulation over the charges that are made for settlement services by tens of thousands of title companies, abstracters, attorneys, surveyors, pest inspectors, and other businessmen and professionals.

I believe that the arguments against Federal rate regulation of settlement charges that are set forth in detail in our statement convincingly demonstrate that such an approach deals merely with the symptoms of problems that can be more effectively and properly dealt with at the Federal level by means of direct prohibitions and regulations such as those contained in S. 2228 and chapter IX of H.R. 16704. In particular, I would like to draw the subcommittee's attention to the views expressed by the Federal Home Loan Bank Board in a letter dated June 14, 1972, to the chairman of the House Committee on Banking and Currency in which the Board expressed its opposition to Federal regulation of settlement costs as "merely symptomatic treatment" that would create "serious distortions and instabilities" in the settlement process and inevitably lead to the creation of a "bureaucratic monstrosity" if rates were set on the basis of fair procedures.

The Board recommended that legislation that would "regulate the underlying business relationships and procedures of which costs are a function" should be approved as the only practical approach. ALTA believes that the views of the Federal Home Loan Bank Board, the agency established by the Congress to insure that adequate funds and resources are available to meet the Nation's housing goals, deserve very serious consideration by this subcommittee.

It should also be noted that, contrary to the statements made by some who favor Federal rate regulation of settlement charges, the "HUD-VA, February 1972—Report on Mortgage Settlement Costs," did not find that settlement costs were unreasonably high in most areas of the country. The conclusion of that report was, and I quote :

Costs appear to be high in some areas, but unreasonable costs probably occur in fewer areas than may be popularly assumed.

Mr. Chairman, as our statement details in greater length, we believe that by enacting provisions that would provide for greater advance disclosure of the nature and costs of settlement services, that would eliminate the payment of kickbacks and referral fees, and that would help local governments to improve and modernize their systems for recording and indexing land transactions, the Congress can most effectively insure that reasonable charges are made for settlement services. Provisions along these lines, combined with actions that are already taking place at the State and local levels and pursuant to other existing Federal statutes, can do far more for the American home buying public than the imposition of arbitrary limits on the charges that are made for settlement services.

Since our time for oral presentation is necessarily limited today, I would hope that the members of the subcommittee and the staff will have the opportunity to review our written statement and the attachments to it.

I appreciate the opportunity to present the views of ALTA here today. We would be happy to respond to any questions that you may have about Federal rate regulation and our position on this issue.

The CHAIRMAN. Well, thank you very much.

Let me ask you this question. Does your organization, the American Land Title Association, have a grievance procedure to hear consumer complaints about unreasonable charges or practices?

Mr. SCHMIDT. It has a grievance procedure to hear any complaints which might be filed against any of the companies in the organization, but none specifically for grievances of the consumer. In other words, if a complaint were made that one of our companies was doing something which was improper then a complaint could be filed before the ethics committee of the American Land Title Association. Such a complaint could emanate from a consumer.

The CHAIRMAN. What has been the experience of your organization in that respect?

Mr. SCHMIDT. I don't know of any complaints. I will ask Mr. McAuliffe, who is the executive vice president, and therefore would be in a better position to answer that particular question, to correct me if I am mistaken.

Mr. JACKSON. Perhaps I could respond to the Senator. I am general counsel of the association. You must bear in mind that the normal functions of the courts these days in permitting the class actions is a very great aid to consumers in enforcing collectively any complaints they may have as to practices generally, as distinguished from independent, single grievances submitted by either a title company or a lawyer.

The CHAIRMAN. I take it that these settlement procedures vary greatly from State to State, and from area to area.

Mr. SCHMIDT. They do vary greatly from State to State. The laws dealing with real property vary. In fact, sometimes as far as customs

are concerned, the customs will vary within a particular State. But certainly the laws vary as to real property and the transfer of it.

The methods of indexing are also quite different in the various recording offices. One of the recommendations which we make is that the recording and indexing procedures be improved. We have in the past and are presently cooperating with other interested groups in seeking such improvement.

The CHAIRMAN. Could you name any particular State that you would consider as having the most effective system of regulation?

Mr. SCHMIDT. Actually, as far as State regulation is concerned, the States of Oregon and Texas are good examples of effective State regulation. We also have effective State regulation in Pennsylvania.

The CHAIRMAN. Senator Williams.

Senator WILLIAMS. Thank you, Mr. Chairman.

I wonder if there are any competitive factors that bear on the cost of settlement services. Acknowledging there are a lot of fees that are fixed. The cost of registering deeds and mortgages is pretty much fixed, is it not?

Mr. SCHMIDT. That is correct, yes.

Senator WILLIAMS. Are there any factors in the area of charges for settlement services that are competitive?

Mr. SCHMIDT. Of course, there are competitive factors, particularly in the work which is done by an attorney.

Now, take the Commonwealth of Pennsylvania. As far as title company fees are concerned, we have an all-inclusive fee which includes the title insurance premium, the examination of title, and the closing. The rate for that has been justified before the Pennsylvania insurance commissioner, and hence it is not possible for one company to deviate from that rate filing which has been made by the rating bureau on behalf of the various companies.

However, there can be competition as far as the service which is rendered by title companies. So far as other aspects—the preparation of an agreement of sale, the preparation of the deed, work of that nature which is done primarily by attorneys—there is definitely competition.

Senator WILLIAMS. That is not uniform either, in all places. Are not there many land transactions where if a buyer or seller desires to choose his own attorney, that attorney is an extra wheel because the institutions that are in the middle of the transaction insist on their approved attorneys?

Mr. SCHMIDT. Well, it is true that a mortgagee, a particular lender, may select his attorney for the preparation of the mortgage papers.

On the other hand, that attorney is not representing the buyer. The buyer, if he wants an attorney to represent him, to decide what is best for him in a particular transaction, he should, of course, select his own attorney.

Senator WILLIAMS. The buyer is financing his purchase. The institution that is the mortgagee will insist on its attorney. And yet, they are on the same side of the transaction.

Mr. SCHMIDT. Of course, someone has to prepare the mortgage, and the bond and note that accompanies it. And the result is that the mortgagee will naturally go to its attorney for the purpose of getting this work done. But this fee is not normally a large amount.

Senator WILLIAMS. I know that this varies from area to area. In some areas——

Mr. JACKSON. Senator, may I inject at this point, because I find that a very interesting question. It is a problem that obtains in title transactions in particular. A lawyer's function is to represent a client or a group of clients with a common interest.

Now, far from eliminating a lawyer from a real estate transaction, I would be much more happy if homeowners each had their own separate attorney representing them, without relying upon the attorney or the title company which is actually settling the real estate transaction. Because, after all, the title company or the attorney closing the transaction is in a position in which he is attempting to do a job for a number of different people who have conflicting interests. And if he is examining title and attempting to prepare instruments for the buyer, the seller, the lender and perhaps the landlord and the tenant all at the same time, each may have a conflicting interest.

Therefore, you do need someone who is examining the title and insuring the title and closing the transaction who is an independent agency. And it would be the ideal situation, contrary to the belief of some people, if each of the other parties had at a fair and reasonable cost an attorney looking out for his own separate and independent interest.

So that what I am trying to say is that the function of closing a real estate transaction is a function which is not necessarily the representation of any specific party, and this is contrary to the concept of some people who may not be knowledgeable in this area.

Mr. SCHMIDT. May I add that S. 2228 includes a proposal that there would be a uniform settlement sheet used throughout the country and that here would be an information booklet which would be distributed to everyone who files a mortgage loan application, which booklet would be tied in with that uniform settlement statement. The uniform statement would provide a full disclosure of costs and would be given to home buyers at least 10 days prior to the closing. This will enable the consumer to shop around and to go over these charges and find out where he can get the lowest charges.

So if there is any question of being overcharged, the consumer will be in a position to determine whether that in fact is the case or not.

Senator WILLIAMS. I do not want to take a great deal of time, we have many more witnesses. There is one thing that troubles me and that is trying to fix by law and regulation fees on some of these services when they vary and the end product is the same; for example, the search of a title such as a real estate title. The work that can go into that search can vary from a jurisdiction where they are computerized into blocks and numbers, where they simply press buttons and you have your findings, to the jurisdiction where I used to search titles in New Hampshire. There you had to go from the old oak to the stone fence to the apple tree. And I will tell you, a simple lot can take you a week to find out whether it is there and who really owns it.

Mr. SCHMIDT. Senator, I can assure you that the American Land Title Association and the various companies and individuals who are members of the association are cooperating in every way to improve our recording systems.

Incidentally that point was in the HUD report. The American University study that was performed for HUD concluded that one of the chief reasons for high closing costs, is the inefficiencies in the recording systems used in many areas of the country.

On your particular question concerning the location of a property by landmarks such as an old oak tree, our association is cooperating with the American Bar Foundation to develop what are called compatible land identifiers. In other words, a simple land identifier system that could be used throughout the country so that you would have a better method of indexing.

Senator WILLIAMS. How have you done in eliminating the natural historical markers, the tree, the fence, the this, the that? And have you eliminated links and rods?

Mr. SCHMIDT. Links and rods, I am sure, have been eliminated in virtually all the States. I cannot answer that for certain, however.

Senator WILLIAMS. You can go back to New Hampshire—

Mr. SCHMIDT. I cannot answer for New England, but only for parts of Pennsylvania.

The CHAIRMAN. I do not believe they have eliminated links and rods altogether. That is still a good measure.

Senator WILLIAMS. The statute has run on my malpractice, but I never did figure out what a link and a rod really was.

The CHAIRMAN. Let me say that I have examined a lot of titles. I have run a lot of titles in my time, and I know some of these problems that the Senator mentions. But I can testify as to the efficacy of well-kept records because they do help a great deal.

With reference to all these lawyers you talk about that might be involved, one for the buyer, one for the seller, one for the title company, one for general supervision, I guess, I may say I have handled a few real estate actions for myself, and I always represented myself on that.

It probably was not a wise thing to do. I have heard that old saying—what is it—“A lawyer who represents himself has a poor client—

Senator WILLIAM. “A fool for a client.”

The CHAIRMAN. Nevertheless, I found it very satisfactory.

Mr. Schmidt, I have some additional questions that I would like to submit to you and have your answers for the record. We will insert the questions and your answers in the record following your prepared statement.

Mr. SCHMIDT. We would be happy to respond to any questions you may have, Mr. Chairman.

[Complete statement of Mr. Schmidt and additional information follows:]

PREPARED STATEMENT OF JAMES G. SCHMIDT,
CHAIRMAN OF THE FEDERAL LEGISLATIVE ACTION COMMITTEE OF
THE AMERICAN LAND TITLE ASSOCIATION,

Mr. Chairman, my name is James G. Schmidt and I am the chairman of the Federal Legislative Action Committee of the American Land Title Association. I serve as consultant for and have also served as the Chairman of the Board and Chief Executive Officer of Commonwealth Land Title Insurance Company of Philadelphia, Pennsylvania. With me today are William J. McAuliffe, Jr., the Executive Vice President of ALTA, Thomas S. Jackson, the Association's general counsel, and William T. Finley, Jr., counsel to the Association.

I appreciate the opportunity to present the views of our Association on a matter of great importance not only to the members of ALTA, but to the home buying public which we serve. ALTA is a national association of approximately 2,000 companies that are in the business of providing title evidence and title insurance. Our membership includes title insurance agents, abstracters and title insurance companies who provide title search and examination services and title insurance protection to home buyers, mortgage lenders and other real estate investors.

While most of the title insurance companies in the United States are members of ALTA, the overwhelming majority of the Association's members are small businesses that are engaged as abstracters or title insurance agents. Most frequently, these enterprises are owned by small, independent businessmen and operate within a single county in a particular state.

Mr. Chairman, while many people may believe that concern for the protection of the consumer is a relatively recent phenomenon, I should like to point out that the development of title insurance in the 19th century was in direct response to the need to protect the consumer in the purchase of land. The first title insurance company in the United States was created in Philadelphia in 1876 by a group of individuals who were concerned by a decision of the Pennsylvania Supreme Court that a real estate purchaser could not recover from a title searcher for a loss resulting from a lien that existed at the time of purchase which the searcher mistakenly believed would not affect the purchaser's title to the property. Since that time, title companies and abstracters have continuously devoted their efforts to minimizing the risks involved in land title transfers. By virtue of these efforts, the marketability of home mortgages has been enhanced tremendously--with the result that title insurance not only assures the security of a real estate investment, but helps to keep the supply of mortgage money flowing to the home buyer by facilitating a secondary mortgage market.

We are proud of our record of having provided almost a century of reliable service to home buyers and real estate investors. We are concerned, however, about maintaining public confidence in us and in the services we render. During the past few years, certain allegations regarding problems and abuses in the real estate settlement process have received public attention. Many of these problems do not involve title companies; other alleged problems simply do not exist or exist in only very isolated instances in a limited number

of areas. But any criticisms--justified or not--that are leveled at the practices or procedures involved in a real estate settlement are of concern to our members. I should like to reiterate, as representatives of ALTA have stated on other occasions in the past, that it is the position of the American Land Title Association that problems or abuses that exist in the settlement process must be and should be immediately corrected, no matter in what area of the real estate industry such problems or abuses occur. The question, however, that this Committee and the Congress itself must direct attention to is what the role of the Federal government ought to be in dealing with these problems.

There are two answers that have been suggested to this question. One proposed answer is to have the Federal government impose limits on the charges that may be made by those who provide certain settlement services. This would impose a scheme of Federal rate regulation over tens of thousands of lawyers, small businessmen who are engaged as abstracters, surveyors and pest and fungus inspectors, and title insurance companies. This approach is embodied in the proposed regulations published by the Department of Housing and Urban Development on July 4, 1972, which would establish the maximum charges for certain title related services rendered in connection with an FHA-assisted real estate transaction, and the virtually identical proposed regulations published on August 26, 1972, by the Administrator of Veterans' Affairs for VA-assisted transactions. The purported authority cited for the publication of these proposed regulations is Section 701 of the Emergency Home Finance Act

of 1970. The theory behind this approach presumably is that certain problems and abuses are resulting in higher-than-necessary settlement charges and that by imposing limits on these charges the problems and abuses will disappear and reasonable settlement charges will thereby be attained.

An alternative approach, which is embodied in the provisions of S. 2228 that was introduced by Senator Brock last week and in the provisions of Chapter IX of the Housing and Urban Development Act of 1972 (H. R. 16704) that was overwhelmingly approved by the House Banking Committee in the closing days of the 92nd Congress, is to have the Federal government supplement state and local efforts to deal directly with the underlying abuses and problems in this area by means of various anti-abuse, disclosure and reform provisions. The theory underlying this approach is that Federal rate regulation would be a cumbersome, discriminatory and highly inappropriate method of dealing with what are merely the symptoms of problems that can more appropriately and effectively be dealt with by means of direct prohibitions and regulations.

ALTA strongly supports this second approach. We believe that any objective analysis of the problem by this Subcommittee or the Congress will lead to the conclusion that the approach adopted by S. 2228 and Chapter IX of H. R. 16704 offers the best means for the Federal government to eliminate any problems and abuses that exist in the real estate settlement process and to ensure that charges for settlement services are not unreasonably high because of undesirable or abusive practices.

Before discussing some of the reasons for our position, I believe it

would be useful to provide the Subcommittee with a brief picture of the legislative and administrative background of this problem.

LEGISLATIVE AND ADMINISTRATIVE BACKGROUND

On July 24, 1970, the Emergency Home Finance Act of 1970 was enacted into law. The main purpose of this Act was to help alleviate the shortage of mortgage credit that existed at that time. The Act also contained a provision, Section 701, that dealt with closing and settlement charges in two ways: Subsection (a) authorized and directed the Secretary of HUD and the Administrator of Veterans' Affairs "to prescribe standards governing the amounts of settlement costs allowable" in connection with the financing of FHA and VA assisted home purchases, and subsection (b) directed the Secretary and the Administrator to undertake a joint study and make recommendations to the Congress with respect to "legislative and administrative actions which should be taken to reduce mortgage settlement costs and to standardize these costs for all geographic areas."

In view of the importance of the other provisions of the Act, Section 701 received little Congressional consideration at the time. Language in the Report of the Senate Committee on Banking and Currency, however, appeared to indicate that it was not the intention of the Congress to authorize HUD and the VA to fix specific maximum charges for settlement services at levels below prevailing levels, but to have HUD and the VA continue their practice of approving

FHA or VA assistance in a particular transaction only if settlement charges for that transaction were in line with customary charges in the local area involved.

Moreover, the language in subsection (b) of Section 701 authorizing a study of legislative and administrative actions that would "reduce" settlement charges would appear to confirm the interpretation that the authority provided by subsection (a) was not intended to be used to reduce these costs. In other words, the scheme of Section 701 appeared to be (a) the development by HUD and VA of interim standards for settlement charges that would not involve a reduction in these charges from customary or prevailing levels, and (b) the preparation of a study by HUD and the VA on what further legislative or administrative actions should be taken to effect reductions in charges.

In February, 1972, the joint HUD-VA Report on Mortgage Settlement Costs, prepared pursuant to subsection (b) of Section 701 of the 1970 Act, was released. (This report was published as a committee print of the Senate Committee on Banking, Housing and Urban Affairs in March, 1972.) The Report included text and tables summarizing data compiled by HUD and VA offices on a sample of real estate settlements involving FHA or VA assistance in the month of March, 1971. In addition, the Report included as a supplement a paper prepared by the staff of the Washington College of Law at American University entitled "The Real Estate Settlement Process and Its Costs."

Some of the findings reached by the HUD-VA Report were summarized as follows on pages 2 and 3 of the Report:

-High cost and other problems of settlement stem in no small part from basic inefficiencies in the multiple and complex systems of conveyancing, recording, and assuring validity of title to parcels of real estate.

-Settlement practices and costs vary between geographic areas and within the same metropolitan area.

-Competitive forces in the conveyancing industry manifest themselves in an elaborate system of referral fees, kickbacks, rebates, commissions and the like as inducements to those firms and individuals who direct the placement of business. These practices are widely employed, rarely inure to the benefit of the home buyer, and generally increase total settlement costs.

-Minimum or recommended fee schedules by local legal or real estate groups often do not reflect the actual work done and tend to increase settlement costs.

-Most public land record systems need to be improved in order to facilitate title search and eventually reduce title related and other settlement costs.

Although the HUD-VA study is frequently cited as having found that excessively high settlement costs existed throughout the country, the actual findings made by the Report on this point was that:

Costs appear to be high in some areas, but unreasonable costs probably occur in fewer areas than may be popularly assumed.

The American University study also reached a number of conclusions and recommendations as to how the settlement process could be improved. Its most significant conclusion was that "at the root of the closing cost problem are poorly organized and indexed public records."

Thus, the HUD-VA Report concluded that while higher-than-necessary costs existed in some areas of the country, this was the product of certain

factors such as the basic inefficiencies in existing land recordation systems (i. e., insufficiencies in the indexing of public land records), the existence of kickbacks or referral fees and the use of minimum fee schedules by lawyers and real estate groups. As I will discuss in greater detail in a moment, direct action has been and can be taken to deal effectively with each of these problems.

Unfortunately, apparently before the Congress could conduct any extensive analysis or appraisal of the HUD-VA Report, the Senate on March 2, 1972, passed S. 3248, the Housing and Urban Development Act of 1972. The bill included a section on closing costs (Section 712) that did not deal with the fundamental problems disclosed by the HUD-VA Report but simply extended the authority of HUD to establish "standards governing the amounts of closing costs allowable" in connection with certain conventional mortgage transactions in addition to FHA and VA assisted transactions. In addition, Section 712 included an anti-kickback provision.

On July 4, 1972, prior to the consideration of this problem by the House Committee on Banking, Housing and Urban Affairs, the Department of Housing and Urban Development published proposed regulations under the authority of Section 701(a) of the Emergency Home Finance Act of 1970 that would have set arbitrary and unreasonable ceilings on certain settlement charges made in connection with FHA assisted transactions in six standard metropolitan statistical areas. These areas included Cleveland, Newark, San Francisco-Oakland, Seattle-Everett, St. Louis and Washington, D. C.

The charges that would have been subject to the proposed HUD regulations included credit reports, field surveys, title examination charges, title insurance, closing fees and pest and fungus inspections. The Federal Register notice accompanying the proposed regulations indicated it was HUD's contemplation that similar standards for other geographic areas would be published subsequently.

Public comment was requested on the proposed regulations and accordingly ALTA filed a memorandum (a copy of which is submitted as Attachment "A" to this statement) strongly opposing the establishment of maximum charges for settlement services in general, and title examination and insurance charges in particular, on the grounds that:

(a) Such action exceeded the statutory authority granted to the Secretary by Section 701(a) of the Emergency Home Finance Act of 1970 to "prescribe standards";

(b) There had been no showing that title insurance rates presently being charged in the areas affected were excessive or unreasonable;

(c) There had been no proper determination by the Secretary that the proposed rates were reasonable;

(d) There was no relationship between the proposed maximums and the cost of doing business;

(e) The fixing of maximum rates for title insurance would conflict with existing federal statutes since the McCarran-Ferguson Act (15 U. S. C. §1012) provides that no act of Congress shall be construed to invalidate, impair or supersede any state law regulating insurance unless the act specifically relates to the business of insurance; and

(f) The charging of such rates by title insurance companies would violate state laws.

This last point deserves emphasis and elaboration. Under the insurance laws of most states, title insurance companies (as well as other insurance companies) may not impose charges that are at variance with the rates that have been filed with and approved by the state insurance authority. Title companies operating in those states could not comply with the proposed HUD-VA maximums in regard to FHA or VA assisted transactions and still be in compliance with state law since those maximums are below the rates that have been approved as reasonable, adequate and non-discriminatory by state authorities. Moreover, the imposition of such limits in FHA and VA transactions would, as a legal and practical matter, result in such limits being imposed in all conventional transactions as well--something that was certainly not intended in the 1970 Act. The reason for this is that most states--Virginia and Maryland are nearby examples--have statutory provisions prohibiting different rates for risks involving essentially the same hazards and expense elements. Moreover, a title company could not justify to the public and could not competitively maintain a policy or practice of lower charges in an FHA-assisted transaction than its charges for an identical house purchased for an identical amount in a conventional transaction.

Thus, many title companies potentially face a difficult dilemma in regard to the proposed HUD-VA maximums: they may either have to give up writing title insurance in FHA and VA transactions to the detriment of the home buyer in such transactions or be forced to adopt the proposed maximums for title insurance in all transactions, conventional as well as FHA and VA.

We have already had some indications from state insurance commissioners that adopting the proposed maximums in all transactions might threaten the solvency of the title companies under their jurisdiction because of the unrealistically low levels imposed on the charges involved. As you can tell, Mr. Chairman, Federal rate regulation involves many problems that apparently have not been fully considered.

Because of our concern about the methodology utilized by HUD in the development of its proposed regulations and the fact that no hearings were held wherein title companies had an opportunity to contest the proposed maximums, ALTA retained the well-respected economic consulting firm of Arthur D. Little, Inc. to analyze the procedures utilized by HUD in reaching their determination of maximum fees for the various settlement services. Arthur D. Little, Inc. submitted a report to ALTA on November 1, 1972, and this report, a copy of which is submitted as Attachment "B", was filed with HUD on November 9, 1972. While I would commend the entire report as essential reading for anyone who wishes to understand why HUD's approach to Federal rate-making simply will not work, the basic conclusions reached by Arthur D. Little can be summarized as follows:

- (1) The proposed maximum charges were not based upon a determination of the actual costs and fair profit of providing title related services;

- (2) The HUD methodology in developing the proposed maximum charges was based on the unjustified assumption that differences in charges for title related services do not reflect differences in the value of services received or the costs of providing such services but arise from unnecessary services and charges or abusive practices;

(3) Apart from the above defects, the HUD methodology cannot be used as a basis to set maximum prices for title related services because its results were consistently downward-biased; and

(4) The proposed maximums were established at the levels indicated by the HUD econometric method as the average prices that should be charged for title related services.

In short, what HUD did was to develop the proposed maximums on the basis of charges in fourteen of the lowest cost states in the country and to ignore many important factors (such as differences in the costs of title searching resulting from differences in the quality of land records) that would account for differences in charges in various areas. Moreover, while the HUD methodology produced figures which under any analysis could only be construed as what average charges should be, HUD converted these figures into maximum allowable charges in their proposed regulations. I can easily understand why HUD has received more comments on these proposed regulations than on any other matter it has ever published for public comment. Virtually all of the comments filed by private businessmen, attorneys and public officials (including state insurance commissioners) have been justifiably critical of the proposed regulations.

Subsequent to the publication of the proposed regulations, the House Committee on Banking and Currency took up consideration of H. R. 16704, the Housing and Urban Development Act of 1972, and, in particular, the provisions of Title IX of the bill as reported by the House Subcommittee on Housing that would have directed HUD to set ceilings on closing and settlement

costs for most conventional transactions as well as for FHA and VA assisted transactions. During the Committee's consideration of the bill, Representative Robert G. Stephens, Jr., of Georgia, offered an alternative to Title IX that would have retained and strengthened the anti-abuse, disclosure and reform provisions of the title but would have eliminated any authority for HUD to prescribe maximum settlement costs under Section 701 of the 1970 Act. ALTA strongly supported the approach adopted by the so-called Stephens Substitute, which contained provisions that would deal with many of the fundamental problems that were discussed in the HUD-VA Report and during the 1972 Congressional hearings that were held by both the House and Senate Banking Committees. This approach proved attractive to many members of the House Banking and Currency Committee and the Stephens Substitute was overwhelmingly approved by a bipartisan 28-8 majority of the Committee. Unfortunately, the entire omnibus housing bill, of which the Stephens Substitute was a part, did not obtain a rule from the House Rules Committee and therefore did not come to a vote on the House floor during the closing days of the 92nd Congress.

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FEDERAL REGULATION OF THE CHARGES MADE FOR SETTLEMENT SERVICES
WOULD BE AN UNWISE AND INAPPROPRIATE RESPONSE TO THE PROBLEMS
THAT EXIST IN THE SETTLEMENT PROCESS IN A FEW AREAS OF THE COUNTRY

Mr. Chairman, on April 5 the Department of Housing and Urban
Development, as part of a review and evaluation of departmental programs,

published in the Federal Register an invitation for public comment on what the role of the Federal government ought to be in the housing area. In response to that invitation, ALTA submitted to HUD a letter dated May 1, 1973 (a copy of which is submitted as Attachment "C"), commenting on the proposed HUD program of regulating settlement charges in FHA-assisted transactions. In that letter we discussed some of the reasons why imposing maximum limits on settlement charges is not an efficient or necessary response by the Federal government to the problem of ensuring that title to real property can be readily transferred at reasonable costs. While our May 1 filing with HUD goes into greater detail on these points, because of the importance of this issue I would like briefly to summarize some of the reasons why we believe the Congress should reject the approach of Federal regulation of settlement charges.

First, Federal rate regulation of settlement charges should only be considered if there are clear and convincing findings that (a) unreasonably high settlement charges are a widespread problem throughout the country and (b) there are no other practical ways to deal with the underlying problems that are causing such high charges. In regard to (a), there has been no demonstration that settlement charges in general, and land title charges in particular, are excessively high throughout the nation. We submit that any such assumption is without foundation. While some home buyers may feel that settlement costs are generally too high, possibly because they do not understand fully the range of necessary services involved in the transfer of something as valuable as residential real property, I must point out again that it was the conclusion of the

1972 HUD-VA Report that while costs "appear" to be high in some areas, "unreasonable costs probably occur in fewer areas than may be popularly assumed." Moreover, in regard to (b), as S. 2228 and last year's Stephens Substitute in the House demonstrate, there are indeed alternative ways to deal with the underlying problems that may be causing higher-than-necessary settlement charges in a few areas of the country.

Second, while certain problems or abuses may exist in particular areas of the country, this is hardly a reason or justification for imposing a substantial economic burden on tens of thousands of businesses and attorneys whose charges for settlement services are reasonable and who do not engage in any abusive or uneconomic practices. If rate regulation were the Federal response to every industry in which some problems or abuses may be resulting in higher-than-necessary charges, there would be few sectors of the economy left where prices would not be dictated by the Federal government. The traditional approach of the Federal government to practices or problems in an industry that may be causing higher-than-necessary prices is to attack those practices or problems directly. We can see no reason why a similar approach should not be adopted in regard to those problems that may exist in the real estate settlement process.

Third, a new bureaucratic machinery of possibly immense proportions would have to be developed by the Federal government if maximum charges are to be established in accordance with reasonable and fair procedures that have been required in other instances of Federal rate making. In a long line

of cases, the Supreme Court has declared that the Constitutional requirements of due process guarantee a full and fair hearing before administratively established rates can be put into effect. See St. Joseph Stockyards Co. v. United States, 298 U.S. 38 (1936); Chicago, Minneapolis and St. Paul Railway Co. v. State of Minnesota, 134 U.S. 418 (1890); Ohio Bell Telephone Company v. Public Utilities Commission of Ohio, 301 U.S. 292 (1937); Railroad Commission of the State of California v. Pacific Gas and Electric Company, 302 U.S. 388 (1938); West Ohio Gas Company v. Public Utilities Commission of Ohio, 294 U.S. 63 (1935); United States v. Illinois Central Railroad Company, 291 U.S. 457 (1934). In his concurrence in the St. Joseph Stockyards case, Mr. Justice Brandeis stated:

The inexorable safeguard which the due process clause assures is not that a court may examine whether the findings as to value or income are correct, but that the trier of the facts shall be an impartial tribunal; that no finding shall be made except upon due notice and opportunity to be heard; that the procedures at the hearing shall be consistent with the essentials of a fair trial; and that it shall be conducted in such a way that there will be an opportunity for a court to determine whether the applicable rules of law and procedures were observed. (298 U.S. at 73; emphasis added.)

Even if such hearings were not constitutionally required, the complexity of the issues and the diversity of conditions in the industries regulated would make it manifestly unfair for HUD to prescribe maximum rates without giving those individuals and businesses whose charges are to be regulated an opportunity to present evidence on their costs and profits, to challenge the evidence presented by others, to be informed about the basis of any decision

reached on proposed maximum charges, and to appeal any final decision setting such maximums prior to the time they become effective. Given the tremendous variation of local laws, requirements and practices that characterize the transfer of real property, it is certain that a large and expensive bureaucratic structure would have to be developed to deal with Federal regulation of settlement charges.

The methodology employed by HUD in developing the proposed limits on settlement charges set forth in their July 4 proposed regulations demonstrates that there is no easy road to the regulation of charges made by thousands of individuals for services rendered in extremely diverse circumstances. By using econometric models, HUD believed that it would be relieved of conducting a costly and burdensome analysis of the services provided in particular localities, of making an accurate calculation of the costs involved in providing such services, of considering differences in the quality of services performed, and of determining whether reasonable profits were being earned by the attorneys, surveyors, pest control inspectors, title insurers, title examiners, abstracters and other businessmen engaged in transactions involving the transfer of real property.

The failure to take these factors into consideration has resulted in the publication of proposed maximums that simply cannot be justified as fair or reasonable. If HUD should insist on issuing final regulations on this basis, such arbitrary rate regulation must certainly be in violation of the due process clause of the Fifth Amendment. Furthermore, if the HUD-established rates

are fixed at levels that are below the costs incurred by those persons and companies providing settlement services, such rates might well be held confiscatory or unreasonable under the due process clause.

ALTA believes that the Congress should give close attention to these serious constitutional questions that inevitably arise under any scheme of Federal rate regulation of settlement charges and that due consideration must also be given to the enormous administrative costs that any fair and constitutional system of rate regulation will necessarily entail. Unfortunately, these important aspects of Federal rate regulation have not received adequate attention from those who favor such an approach.

Fourth, the development of a new Federal bureaucracy to regulate settlement charges would, at least in the case of title insurance charges, duplicate many existing and proposed state regulatory schemes, thereby imposing additional administrative costs that can only result in increased title insurance charges. As I have already pointed out, it may be impossible for title companies to comply with Federally-established maximum limits and at the same time comply with their obligations under state laws to charge rates which have been found to be reasonable and necessary by the state insurance authorities that regulate title insurance companies. Moreover, it would be dangerous and unwise for the Federal government simply to prescribe maximum limits for title insurance charges without at the same time adopting the necessary legislative and administrative framework to ensure that adequate reserves will be maintained and that these maximum limits would not jeopardize

the solvency of the affected title companies. State regulatory schemes characteristically not only provide for the examination of rates charged by title insurance companies to ensure that they are fair and reasonable to the customer, but, directly or indirectly, also govern such matters as the coverage of title policies, title insurance reserves and the financial solvency of title companies. It is obvious that the charges that are made for title insurance services have a direct impact on these other aspects of title company operations, and vice versa. Unless the Federal government intends to abandon the well-established policy embodied in the McCarran-Ferguson Act and regulate all of these other aspects of title insurance operations--a proposal that no one has suggested because of the tremendous costs and administrative burden involved in the duplication of existing state regulatory schemes--it would be extremely unwise and potentially disastrous to the financial soundness of the title industry for the Federal government to prescribe maximum limits for title insurance charges. In other words, the responsibility for regulation of rates cannot be divorced from the responsibility for overseeing other aspects of title company operations.

Fifth, the imposition of limits on charges for settlement services does not deal effectively with the fundamental reasons why certain settlement charges may be unnecessarily high in a few areas of the country. This point was persuasively made by the Federal Home Loan Bank Board in a letter dated June 14, 1972, to the chairman of the House Banking and Currency Committee. In commenting on the settlement cost provisions of last year's housing bill,

the Board opposed the concept of Federal rate regulation and characterized such an approach as "merely symptomatic treatment." Instead, the Board stated its belief that the only pragmatic approach is "to regulate the underlying business relationships and procedures of which the costs are a function." In addition to opposing rate regulation because it failed to come to grips with the real problems involved, the Board stated its view that "rate regulation is likely to create a bureaucratic monstrosity," that "rate regulation is contrary to this country's traditional philosophy regarding the role of the market place," and that "rate regulation not only doesn't work very well, but itself creates serious distortions and instabilities." The Board summarized its position by saying that "the costs of rate-fixing outweigh the benefits." (A copy of the complete letter is set forth as Attachment "D".) ALTA believes that the views expressed by the Federal Home Loan Bank Board, the agency established by Congress to ensure that adequate funds and resources are available to meet the nation's housing goals, deserve most serious consideration by the Congress.

Sixth, it is important for this Subcommittee and the members of Congress to realize that even if the Federal government imposed rate regulation on the charges imposed by title companies, attorneys, surveyors and others who provide settlement services, only a small part of total settlement costs would be affected. While title companies and lawyers are all too frequently the main focus of attack by those who believe settlement costs are too high, the plain fact is that the major portion of the total charges paid in connection with the transfer of real property consists of such items as transfer taxes, recording

fees, prepaid taxes and insurance, loan origination fees, loan discounts or "points" and sales commissions to real estate brokers. An examination of the table set forth on page 36 of the March, 1972, HUD-VA Report on the settlement charges incurred in the more than 50,600 transactions examined by HUD indicates that the average total cost involved in the sale and transfer of ownership of a home was \$1,937 and that the average charges for services covered by the proposed HUD regulations (title examination and insurance, survey, attorney's fees, pest inspection, preparation of documents, closing fees and escrow fees) amounted to only \$290. Thus, only approximately 15 % of total settlement charges would be covered by Federal regulation.

Assuming that Federal ceilings were arbitrarily imposed at levels which are 25 per cent below prevailing levels--even though it is highly doubtful that such a large reduction could be justified on any grounds--the net savings to home buyers and sellers would amount to only 3 1/2 per cent or so of total settlement costs. Weighed against this comparatively minimal savings is the likely catastrophic effect on those regulated of having to reduce their charges by 25 per cent. A great many businessmen and lawyers who provide settlement services and who earn only modest profits from the prevailing charges will be forced out of business and into other lines of endeavor. If this happens, competition in this area will be significantly reduced since few competitors can afford to stay in business if they do not earn reasonable profits. I cannot believe that such a result is in the best interests of the

American home buying public.

ALTA SUPPORTS THE BASIC APPROACH OF S. 2228 AND CHAPTER IX OF
H. R. 16704 AS APPROVED LAST YEAR BY THE HOUSE BANKING AND
CURRENCY COMMITTEE

Mr. Chairman, ALTA believes that there are better and more efficient ways to deal with problems that may exist in the real estate settlement process than to have the Federal government fix maximum limits for settlement charges. We believe that Federal legislation along the lines of S. 2228 and last year's Stephens Substitute, combined with actions already being undertaken at the state and local level by those who provide settlement services, by state and local governments and by Federal officials, offers the best hope of ensuring that necessary settlement services are provided to home buyers at reasonable costs.

Before discussing some of the provisions of S. 2228, I think it would be useful to the Committee if I highlighted just a few of the actions that have been taken within the last year at the local, state and Federal levels that demonstrate that the problems in these areas can be dealt with without the need for Federal rate regulation.

On March 16, 1973, ALTA members again confirmed the strong and active position the Association has taken in the past in support of strengthened state regulation of title insurance by approving an extensively revised and up-dated Model Title Insurance Code. Included in this Model Code (a copy of

which is set forth as Attachment "E" to this statement) are provisions requiring close supervision by the state insurance commission of title insurance rates and operations, provisions prohibiting kickbacks or rebates of any type, and provisions requiring home buyers who purchase lender's title insurance to be advised that such a policy does not protect them, but that owner's title insurance is available if they wish such coverage. ALTA members have agreed to encourage the adoption of the Model Code by state legislatures wherever possible. We believe that effective state regulation of title insurance, which can be responsive to the variations that exist in local requirements and conditions, offers the best means of maintaining public confidence in our industry by assuring that title insurance rates will not be excessive, inadequate or discriminatory.

The National Association of Insurance Commissioners, through a duly appointed title insurance Task Force of that organization, is also aggressively pursuing strong and more effective regulation of title insurance. For example, as its December, 1972, meeting, the NAIC adopted the following resolution:

Resolved, by the National Association of Insurance Commissioners, December 7, 1972, that the supervision and regulation of the business of title insurance is and should continue to be the responsibility of the respective states, and be it further

Resolved, that a Subcommittee of the Laws, Legislation and Regulation (B) Committee be designated to proceed with dispatch in drafting a model title insurance law for adoption by the NAIC as a means towards promoting uniformity of the operation and regulation of title insurance.

This NAIC Subcommittee is presently working on the development of a strong

model code, which will be submitted for approval by the NAIC at its December, 1973, meeting.

While strong competitive or regulatory safeguards exist or are in the process of being developed in regard to title insurance and other settlement services, in the remaining areas of closing and settlement competition is rapidly developing by virtue of recent actions undertaken by the Department of Justice and recent court decisions. For example, the Department of Justice has recently undertaken several actions challenging the use of minimum fee schedules by bar associations and real estate brokers. A recent decision of the United States District Court for the Eastern District of Virginia in the case of Goldfarb v. Virginia State Bar has held that minimum fee schedules utilized by bar associations are a form of price fixing and, therefore, inconsistent with the antitrust laws. Many bar associations have voluntarily decided to eliminate the use of such schedules. These actions should have the effect of ensuring that competitive charges are made for real estate settlement services provided by attorneys.

Similar action by the Justice Department in regard to commission rates for real estate brokers indicates that the Federal government is vigorously pursuing activities in this area that it believes to be anti-competitive. On April 16, 1973, for example, the Department filed a consent judgment in the United States District Court for the Western District of Pennsylvania prohibiting the Greater Pittsburgh Board of Realtors and four multiple listing service organizations from fixing commission rates in connection with the sale of

housing. Since December 18, 1969, the Department has brought nine such actions, seven of which have already been settled by consent decree. These are just some examples of activities taking place at the state and local levels or under existing Federal law to deal with problems in the settlement process.

In regard to Federal efforts that could supplement the actions at the state and local level, there are at least three problem areas that ALTA believes might appropriately be dealt with in Federal legislation. First is the lack of understanding on the part of most home buyers as to the purpose, nature and costs of particular settlement services. Second is the existence in some areas of the country of the payment of kickbacks and referral fees, the cost of which is inevitably passed on to the home buyer even though he receives no benefit from the charge. Third, and perhaps most important of all, is the need for modernization of land recordation systems in order to deal with a problem that all of us who are engaged in land title work face--poorly organized and indexed public records relating to interests in real property.

1. Information on Settlement Services and Costs

While title companies, attorneys, lenders and others have made commendable efforts to help inform home buyers about the nature and costs of settlement services, ALTA supports Federal legislation, along the lines of Sections 102, 103 and 104 of S. 2228, that would assist every purchaser of a home in obtaining full information about the settlement process and the costs he is likely to incur at the time of settlement.

Section 103, for example, would direct the Secretary of HUD to prepare special information booklets that would provide a description and explanation of the nature and purpose of each cost incurred at settlement, the nature and purpose of escrow accounts, the choices available to home buyers in selecting persons to provide settlement services and an explanation of the unfair practices and unreasonable or unnecessary charges to be avoided by the prospective buyer with respect to a real estate settlement. Lenders will be required to provide these booklets to a prospective home buyer at the time when the information will prove most useful to him--when he files a mortgage loan application. These booklets should prove to be of real benefit to home buyers in helping them to select those who will provide settlement and to avoid unreasonable or unnecessary practices or charges. As is true in so many other instances, informed buyers can very effectively help to eliminate undesirable practices in the industry.

Sections 102 and 104 of the bill would require that an itemization of settlement costs be provided to home buyers, on a uniform settlement form to be developed by HUD, at least ten days in advance of settlement. By requiring that this information be given a substantial time in advance of settlement, the bill would put the home buyer in a better position to utilize the information provided by the special information booklets and to question and negotiate the charges that are listed. In any event, apprising the home buyer in advance that he will have to incur certain costs, such as the payment of transfer or recording taxes or fees, title examination and insurance charges,

and escrow payments for real estate taxes' and insurance, will help to avoid the difficulties faced at the present time by many home buyers who are surprised to learn of such costs only at the time of settlement. Of course, there is little that the home buyer can do about these charges if he first learns about them at the time of settlement.

2. Elimination of Kickbacks and Referral Fees

A second problem that has received great public attention is the payment of kickbacks or referral fees made in order to obtain settlement business. While such payments do not exist in most areas of the country, the problem is sufficiently important to be deserving of Federal remedial legislation. Since such payments do not benefit the home buyer, ALTA has long been opposed to kickbacks or referral fees. For example, our 1964 Model Title Insurance Code contained a strong anti-kickback provision in Section 136, and similar language has been included in the revised Model Code that was approved by our membership this past April. ALTA has for many years recommended that legislators and regulators in all states that have not already done so act to prohibit such payments in the title insurance business. We therefore support a strong anti-kickback provision that would apply to all aspects of the settlement process. We believe the approach of Section 105 of S. 2228 is sound and that some provision along these lines should be incorporated in any Federal legislation dealing with settlement costs.

3. Improvement of Land Recordation Systems

The third area where Federal legislation would be proper and desirable is in assisting local governments to improve existing land recordation systems. As the January, 1972 Report by American University to HUD on Mortgage Settlement Costs concluded: "(T)he root problem involved in reducing costs is reform and reorganization of public land records." A first step must be taken in this area to investigate what can be done to assist local governments in improving and modernizing their land record systems. While S. 2228 does not contain a provision dealing with this problem, ALTA believes that a provision along the lines of Section 911 of H. R. 16704, as approved last year by the House Banking Committee, presents a reasonable first step for the Federal government to take.

Under that section, the Secretary of HUD would be directed to establish and place in operation, on a demonstration basis in various areas of the country, a computerized system for the recordation of land parcels. This system would be designed to facilitate and simplify land transfer and mortgage transactions with a view to the eventual development of a nationally uniform computerized system of land parcel recordation. We would recommend, however, that in addition to computerized models, the language of the section be expanded to permit the Secretary sufficient flexibility to develop other model systems for the recordation and indexing of interests in land. A computerized system may work in some areas, but may not be useful in other areas. The experience gained from these models should prove invaluable

in the determination of how basic reforms in land parcel indexing and recording can be achieved. We would hope that the Secretary and his staff would consult with us and with others who have had extensive experience in this area in carrying out his mandate under this section.

I should also point out that the title industry has been continually seeking to develop more efficient methods for conducting title searches and examinations of the public records in an effort to keep costs down and obtain greater efficiency. For example, many companies have begun to use electronic data processing techniques in handling the public land title records with which they must deal. Some of the larger companies have developed fully computerized title plants. In a number of areas, including Denver, Dallas/Ft. Worth, Houston, St. Louis, Los Angeles, Phoenix and Washington, D. C., title companies have formed joint title plants from which to examine titles. These cooperative efforts help eliminate duplicative costs, thereby effecting savings which can be passed on to the home buyer. In addition, the American Land Title Association is cooperating with the American Bar Foundation in the development of a computerized land parcel identifier system which would make a major contribution to more efficient land record keeping in this country.

4. Other Provisions

There are some other provisions of Chapter IX of H. R. 16704 that ALTA believes would prove to be a real benefit to home buyers and recommends be included in any Senate bill dealing with closing and settlement costs. Section

908, for example, of H. R. 16704 would limit the amount that home buyers could be required to pay into escrow accounts at the time of settlement and thereafter for the purpose of ensuring the payment of real estate taxes and insurance. While ALTA is not directly affected by this provision, we believe that the proposal is a reasonable one and will have the effect of reducing, at least in some instances, the total costs incurred at settlement.

Likewise, we would support a provision that would prevent home buyers from being charged for the costs of preparing Truth-in-Lending statements or the disclosure statements called for by Sections 102 and 104 of the S. 2228.

If whatever underlying problems that exist in the settlement process are dealt with directly by appropriate reform provisions, as they are by the provisions of S. 2228, we believe that there is absolutely no need for the Federal government to fix the maximum charges that may be made for settlement services. Accordingly, we strongly endorse the repeal of Section 701 of the Emergency Home Finance Act of 1970, as would be provided for by Section 108 of S. 2228.

CONCLUSION

Mr. Chairman, in conclusion I would like to point out that the proposals embodied in S. 2228 combined with the provisions of Chapter IX that I have discussed are directly responsive to recommendations for additional Federal action made in the February, 1972 HUD-VA Report on Mortgage Settlement

Costs. On pages 3 and 4 of that report, HUD and the VA set forth a number of suggestions for action at the Federal level that they believed to be necessary to reduce settlement costs. These proposals were that:

- (a) A single uniform settlement statement should be utilized in providing disclosure of settlement costs;
- (b) Buyers should receive detailed estimates of probable individual settlement costs in advance of settlement;
- (c) Such disclosure should indicate that the mortgagee's title insurance policy does not protect the buyer's interest, but that a policy protecting the buyer is available at an additional cost;
- (d) Limitations should be placed on the initial deposits that are required to be made into escrow accounts for payment of real estate taxes and insurance and that limitations be placed on the monthly payments that may be required thereafter;
- (e) Lenders be prohibited from charging a fee for the preparation of Truth-in-Lending statements or other disclosure statements; and
- (f) A federally sponsored, computerized land parcel recording system be developed in selected jurisdictions throughout the country, with a view toward the development of a nationwide system which will simplify procedures and result in reduced costs.

ALTA believes that S. 2228, with the amendments we have suggested, would be responsive to each one of these recommendations made in the HUD-VA Report. We believe that the combination of reform legislation along the lines of S. 2228 or Chapter IX of H. R. 16704 and the other actions described above that are presently being taken at the state and Federal level will ensure that reasonable charges are made to the American home buying public for settlement services.

Mr. Chairman, thank you for this opportunity to appear before the Subcommittee and give testimony on this very important subject.

RESPONSE OF JAMES G. SCHMIDT, ON BEHALF OF THE AMERICAN LAND
TITLE ASSOCIATION, TO QUESTIONS ASKED BY THE SUBCOMMITTEE ON
HOUSING AND URBAN AFFAIRS OF THE SENATE COMMITTEE ON BANKING,
HOUSING AND URBAN AFFAIRS

1. Didn't the HUD-VA Report of February, 1972, on Mortgage Settlement Costs find that settlement costs were unreasonably high in most areas of the nation and that the establishment of maximum limits on such charges by the Federal government was the only way to deal with the problem?

On the contrary, the HUD-VA Report did not find that settlement costs were unreasonably high in most areas of the country. The HUD-VA Report specifically stated in its conclusions on page 2 that:

"Costs appear to be high in some areas, but unreasonable costs probably occur in fewer areas than may be popularly assumed."
(Emphasis added.)

Moreover, the Report did not suggest that the establishment of maximum limits on settlement charges by the Federal government was the proper way to deal with the problems that were causing higher than necessary costs in the areas where such problems did exist. While the Report did state that the two agencies were prepared to carry out the provisions of Section 701 of the Emergency Home Finance Act of 1970, which they apparently have interpreted as requiring the establishment of maximum charges on settlement costs incurred in FHA and VA assisted transactions, the Report in no way concluded that Federal regulation of settlement charges in all transactions was advisable or necessary. On the contrary, the Report laid great emphasis on solving problems in this area through effective state regulation, concluding specifically that action at the state level could most effectively attack the underlying problems.

Indeed, in our view it is very significant that Federal rate regulation was not recommended for conventional transactions. If HUD and the VA had really believed that Federal rate regulation was the answer to problems in this area, or that these problems could not be dealt with successfully by alternative approaches, presumably the Report would have contained a recommendation that Federal rate regulation be employed across the board. Instead of advocating Federal rate regulation, HUD and the VA called for a number of reforms at the Federal and state levels designed to provide greater information to home buyers on the nature of settlement costs and services, to eliminate various abusive or undesirable practices and procedures, and to revise and modernize the local systems used throughout the country for the recordation and indexing of land parcels. The provisions of S. 2228 and the provisions of Chapter IX of H.R. 16704, as approved last year by the House Committee on Banking and Currency, would be directly responsive to these proposals made in the HUD-VA Report.

2. What part of total settlement costs incurred by the home buyer would be covered by the proposed HUD-VA regulations?

Based on the table set forth on page 39 of the March, 1972, Senate Banking Committee reprint of the HUD-VA Report on Mortgage Settlement Costs, it appears that only 15% of total settlement costs would be covered by the regulations proposed by HUD on July 4, 1972. This table (a copy of which is submitted as Attachment I) summarizes the average charges for all settlement items in the 50,605 transactions examined by HUD and the VA in March, 1971. As this table indicates, the average total settlement

costs incurred by both buyers and sellers in the transactions examined amounted to \$1,937. The total amount of the charges that would be subject to the proposed HUD regulations -- that is, charges made for credit report, survey, title examination, title insurance, attorney fees, preparation of documents, closing fees, escrow fees, other closing costs and termite inspection -- amounted on average to only \$290. (A chart summarizing these fees is submitted as Attachment II.) Thus, approximately only 15% of total settlement costs, as indicated by the HUD-VA table, would be subject to regulation. The overwhelming majority of settlement costs are accounted for by such items as transfer taxes, recording fees, prepaid taxes and insurance, loan origination fees, loan discounts or "points," and sales commissions to real estate brokers. As I indicated in my prepared statement, while title companies and lawyers are all too frequently in the main focus of attack by those who believe settlement costs are too high, the fact remains that the major portion of total charges made in connection with the transfer of real property consists of items over which lawyers and title companies have no control.

3. What steps, if any, are the American Land Title Association and its members taking to reduce closing and settlement costs -- or at least keep those costs at reasonable levels?

Members of the American Land Title Association favor any reasonable approach that will reduce or stabilize closing costs and maintain the quality of settlement services at a level sufficient for adequate protection of the home buying public. The following activities of Association members are

evidence of our ongoing interest in keeping the costs of closing and settlement as low as practically possible.

First, support of Federal legislation that would provide for advance disclosure and home buyer education regarding closing costs so that buyers can shop around for the best possible terms; that would prohibit kickbacks for referrals of business in real estate transactions; and that would provide for model land recording systems to help improve public records and facilitate land title searching.

Second, ongoing support of state legislation designed to maintain effective land title evidencing at reasonable charges. Current examples are proposed legislation in the State of Illinois to provide for "prior approval" rate making and the strict regulation of rebates and referral fees, and a proposed title insurance code in New Jersey that includes an effective prohibition of kickbacks.

Third, sponsorship of a Model Title Insurance Code to help states strengthen their regulation of title insurance. This Model Code includes provisions for the regulation of title insurance operations and charges and the prohibition of kickbacks.

Next, we have assisted the National Association of Insurance Commissioners in its development of a model title insurance code.

We have also been working with state insurance departments to develop comprehensive statistical plans for improved rate justification procedures. Ohio and Pennsylvania are examples of two jurisdictions where significant efforts along these lines are making good progress.

We have also been cooperating with the National Conference of Commissioners on Uniform State Laws in its work to develop a Uniform Land Transactions Code and with the American Bar Foundation in the development of a compatible land identifier system.

The title industry has been encouraging the establishment of jointly owned title company facilities as a cost-saving measure in the efficient use of land title evidence.

Finally, we have been cooperating with the American Bar Association in the development of the Uniform Probate Code which is designed to greatly simplify the transfer of real property in a decedent's estate.

4. How else can we be sure that settlement costs will be reasonable if we don't regulate the charges made by those people who provide settlement services?

As I indicated in my prepared statement, ALTA believes that the regulation of charges made by those providing settlement services is a most ineffective and undesirable way for the Federal government to try to ensure that settlement costs will be reasonable. We agree with the conclusions reached in the HUD-VA Report that certain problems and practices in the settlement process tend to increase unnecessarily the cost of settlement. Among these problems are the fact that most home buyers lack the information to shop around for settlement services, the existence of kickbacks or referral fees, the poorly organized and indexed public land records in many jurisdictions, and the existence of minimum

fee arrangements. By dealing directly with these problems, either by new Federal legislation or by enforcement of existing statutes, the Federal government can ensure that these problems or practices do not unnecessarily increase settlement costs without establishing the huge bureaucratic structure that would be needed in order to provide for a fair system of Federal regulation of settlement charges. Certainly, no one would suggest that the Federal government ought to impose rate regulation over every business or industry where prices or charges may not be considered "reasonable" in every section of the country. If the Federal response to every situation where certain practices may be resulting in higher-than-necessary charges were to regulate the rates or charges that are made, there would be few sectors of the economy left unregulated. The more desirable approach is to attack directly those abuses that have been shown to exist.

5. Why do each of the title companies in an area duplicate the public records and then pass the cost on to the consumer?

To begin with, in a number of areas where the public records are well maintained, title companies do not maintain separate title plants containing information from these records since title searches can be performed efficiently by directly utilizing the public records. In areas where the public records are either poorly organized or maintained, title companies have had to establish title plants in order to ensure that a title search can be accomplished expeditiously to facilitate prompt completion

of a transaction at a reasonable cost to the home buyer. Within a typical plant are complete files of information on all parcels of land in a given locale -- usually a county -- so a title company is always ready to search efficiently any parcel in its area. If these title plant records were not maintained, title searching in these areas would be extremely difficult and much more costly. While the costs of maintaining such a plant are, of course, included in the cost of title searching or title insurance that is borne by the home buyer or seller, the charges that would have to be made for these services if such plants were not maintained would be higher, and the ability to complete a title search within a short period of time would be seriously impaired.

It should also be noted that in areas where title companies maintain their own title plants, there has been significant activity toward the development of joint plants whereby title companies operating in the area can share the cost of maintaining a single facility of this type. The development of such plants will help keep the overhead of these title companies at reasonable levels, thereby assuring the lowest possible charges to the home buyer for title insurance services.

Estimated Average Total (Buyers and Seller) Costs
By Type of Cost and Price Range
FHA-Insured and VA-Guaranteed Cases
United States Total
March 1971

Cost Item	All Cases		Under \$12,000	\$12,000- 15,999	\$16,000- 19,999	\$20,000- 23,999	\$24,000- 27,999	\$28,000- or More
	Number a/	Average Cost						
Total Settlement Costs	50,605	\$1,937	\$1,349	\$1,552	\$1,691	\$2,067	\$2,609	\$3,148
Total Closing Costs	50,605	558	418	462	521	585	709	835
Credit Report	38,160	11	10	10	11	11	12	11
Appraisal Fee	29,698	37	35	38	38	38	36	38
Compliance Inspection Fees	987	18	13	14	17	17	25	24
Survey	29,216	43	44	42	42	44	46	50
Title Examination	19,595	110	99	105	110	110	142	179
Title Insurance	46,330	127	87	107	117	133	165	181
Attorney Fees	13,766	106	70	78	104	128	153	150
Origination Fee	47,293	190	96	142	177	214	251	309
Preparation of Documents	18,687	28	35	26	27	27	25	29
Closing Fees	7,569	43	50	41	41	43	37	50
Recording Fees	48,447	18	17	17	18	19	22	19
Transfer Taxes	33,672	72	69	55	59	70	96	119
Escrow Fees	16,913	74	37	51	71	89	93	93
Other Closing Costs	34,581	32	30	25	29	38	41	42
Termite Inspection	13,453	19	18	17	20	20	21	22
Loan Discount Payment	39,771	578	360	450	533	625	707	933
Total Prepaid Items	50,268	301	216	248	264	315	397	489
Taxes	47,327	182	121	139	148	200	256	315
Mortgage Insurance	34,637	11	6	9	11	12	14	16
Hazard Insurance	47,890	82	66	69	75	84	97	125
Special Assessments	3,045	229	156	241	257	230	251	149
Other Prepaid Items	27,383	57	32	45	54	61	78	94
Sales Commission	31,076	1,019	570	763	922	1,150	1,384	1,780

a/ Based on a sample.

Note: Subtotals do not add to totals because only nonzero costs were used to compute averages.

CLOSING COSTS SUBJECT TO REGULATION

<u>Type of Regulated Closing Cost</u>	<u>No. of Transactions In Which Cost Incurred</u> (1)	<u>Average Cost In Each Transaction When Such Cost Was Incurred</u> (2)	<u>Average Closing Cost Based on all 50,605 Transactions Examined (Column (1)x(2) ÷ 50,605)</u> (3)	<u>Closing Cost As a Percentage Of Total Settlement Costs</u> (Column (3) ÷ \$1,937) (4)
Credit Report	38,160	\$ 11	\$ 8	0.4%
Survey	29,216	43	25	1.3
Title Examination	19,595	118	46	2.4
Title Insurance	46,330	127	116	6.0
Attorney Fees	13,766	106	29	1.5
Preparation of Documents	18,687	28	10	0.5
Closing Fees	7,569	43	6	0.3
Escrow Fees	16,913	74	25	1.3
Other Closing Costs	34,581	32	22	1.1
Termite Inspection	13,453	19	3	0.2
Average Total Closing Costs Subject to Regulation:			\$290	15.0%

Source: Committee on Banking, Housing and Urban Affairs, U. S. Senate, Mortgage Settlement Costs: Report of Department of Housing and Urban Development and Veterans' Administration (March 1972), p. 36

Appendix A



American Land Title Association

1828 L Street, N.W., Washington, D.C. 20036 • (202) 296-3671

October 15, 1972

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TO: The Honorable Eugene A. Gullledge,
Assistant Secretary for Housing,
Production and Mortgage Credit
c/o Rules Docket Clerk
Department of Housing and Urban Development
451 - 7th Street, S. W.
Washington, D. C. 20410

Re: 24 CFR Part 203
Docket # R-72-197

A MEMORANDUM ON BEHALF OF THE AMERICAN
LAND TITLE ASSOCIATION

Reservation of Right to Supplement

This memorandum is filed on behalf of the American Land Title Association and its members. The Association has employed Arthur D. Little, Inc., a nationally recognized research firm, for purposes including the analysis of methodology used by the Department of Housing and Urban Development in formulating proposed maximum settlement charges. As of this date, Arthur D. Little, Inc. has not completed its work. We therefore reserve the right to submit a supplementary statement based on its findings, or any additional information, if we deem that such data or facts would be helpful or explanatory. The time for preparation and clearance of this memorandum has been exceedingly short. The proposals published by HUD on July 4, 1972 will have a serious and adverse impact on all real estate transactions, not limited to those involving the home buyers for whose primary benefit they are designed.

Overview

The American Land Title Association is not only in sympathy with, but supports, the movement which has for its purpose the elimination of abuses, unsound and uneconomical practices in the closing of real estate transactions everywhere and anywhere in the United States. The entire history of the Association's existence and activities supports this premise. One of its earliest activities, indeed a preliminary stimulant to the creation of the Association some 65 years ago, was the drafting of a code of ethics. It has a deep consciousness of its own responsibility and that of its members to the public to provide assurance, with financial responsibility, that persons who acquire interests in real estate shall be secure in their titles. The industry represented by this Association well knows that it is fundamental to both the public interest and the separate interests of its members that the public be honestly, efficiently and economically served.

To this end, it does not oppose appropriate regulation but on the contrary, has itself been instrumental, in increasing degree, in creating statutory regulatory procedures in the several states. In its recent history the Association has strongly favored state regulation, an attitude which marks a change at least in degree from the view, held by businessmen everywhere in earlier days, that the industry should resist any and all

governmental interference. An unparalleled rate of increase in the population has resulted in a geometric intensification of building activities, both in the residential and commercial field. As a consequence, the title industry has become a complex and highly competitive system of elementary significance in the economic structure of this country. The industry is now measured in multi-millions of dollars invested in title plants and money reserves, paying millions of dollars annually in wages and represented not only by a number of title insurance companies with large financial resources, but by hundreds of small businesses throughout all the states devoted to developing expertise in preparations for and the closing of real estate transfers. The size, number and widespread significance of the industry is partially illustrated by the Membership Directory of the American Land Title Association, a copy of which is transmitted herewith. In addition to the members of this Association, there are many other small businesses who are abstracters and agents, active in state associations, and a great number of lawyers, a substantial part of whose practice consists of title examination and real estate closings.

Whatever else may be subject to dispute in this complex field, it is hardly a subject of debate that regulation of this industry is not a simple matter. To those who are really familiar with the operations involved in such transactions, it is equally indisputable that practices, laws, and economic factors require the conclusion that regulation is

best undertaken on the local, i.e., the state, level. This is the firm position of the American Land Title Association, not taken for the purpose of evading federal regulation but for the clear reason that state regulation is the place where such regulation can be best adapted to local conditions, and at the same time preserve to those engaged in the business a fair return without unreasonable restraints and impositions. While many real estate transactions may be considered in some way to affect interstate commerce, they are primarily local transactions by the very nature of the subject matter.

This is not to say, and this Association does not say, that nothing can or should be done at the federal level to encourage a standardization of practices across the nation to make transfers of real estate more efficient and less costly, and -- what may be equally important -- more understandable to the parties involved with particular reference to those who are purchasing single-family residences, whether they be separate houses or units in apartment complexes. This goal is consistent with the principles of this Association. Greater and better understanding of what is taking place on the part of the buyer and seller of a home is beneficial from every aspect and will serve as an influence toward greater efficiency and less cost.

The Standardized Settlement Statement

In conformity with the foregoing, the American Land Title Association favors, and approves, the effort and purpose of the Secretary to

prescribe a standardized title settlement statement for use in transactions involving FHA and VA loans. It does not approve the particular form, a part of the proposals, because, from the information received from its members, the Association conceives that it will not fit the circumstances and practices of some areas, and certain important elements are not provided for. It is not the purpose of this memorandum to discuss or criticize the details of that form: as indicated, the objective is approved. This Association is prepared to appoint a committee of knowledgeable members of our industry and to join with you and other concerned groups (such as The Mortgage Bankers Association and the American Bar Association) to help compose a form, or a group of forms, which will better serve your intent and goal. The industry has made efforts to develop a standardized form itself; and it may be said that this Association welcomes the influence of the Secretary in bringing these efforts to fruition. We have no doubt that specific criticisms of the form will be presented to the Secretary by the members in the various areas affected.

Abuses, Kickbacks, And
Unearned Payments

While the American Land Title Association wholeheartedly supports standardized settlement cost reporting forms, it must preface its comments on proposed corrective measures as to abuses, kickbacks and unearned payments with several caveats. Foremost is the observation that recent criticism of the title industry has seriously, and without justification,

undermined public confidence in an industry which has been discharging an important consumer protection function since 1876.

A recent study by your Department and the Veterans Administration, in point 4 of a ten-point Summary of Findings, stated:

"Costs appear to be higher in some areas, but unreasonable costs probably occur in fewer areas than may be popularly assumed."

Report on Mortgage Settlement Costs,
U. S. Department of Housing and Urban
Development and The Veterans Administra-
tion, January, 1972, p. 4

Moreover, the evidence, some of which will be cited hereafter, is quite clear that mounting state and county transfer and recordation taxes and other elements over which neither the title industry nor the Department of Housing and Urban Development has any control are the real culprits where costs are too high. It would, therefore, be deceptive for the Department or anyone else to give the public the impression that the proposed regulation attacks any but the most minor elements of the settlement bill of the nation's home buyers.

It is also important to point out that recent unjustified wholesale and often reckless criticism of the title industry has had the effect of undermining public confidence in and reliance upon the major protection afforded by owner's title insurance, and it may well fall to the Department to correct this unfortunate development by requiring notice to all buyers that owner's title insurance -- and not lender's insurance -- protects owners against unforeseen claims which may develop against title.

With the above caveats, the American Land Title Association desires to cooperate with the Secretary in promulgating regulation to attack abuses wherever they may occur, within the bounds of the Secretary's authority.

Much of the criticism of the industry in recent times has concerned what are called "kickbacks". By this term is meant consideration or inducements for other than services rendered to persons who place title insurance with a particular title insurance company. These payments have come in the form of "commissions" or origination fees to real estate brokers, lawyers, and others, who have performed no other service for those payments than the selection and designation of the title insurance company as the insurer. The American Land Title Association has already placed itself on record as favoring appropriate regulation to prohibit such considerations or inducements. This Association is prepared to appoint informed representatives of the industry to work with your Office in drafting appropriate regulations.

ESTABLISHMENT OF MAXIMUM RATES
AND CHARGES

In the proposed regulations published by your Office on July 4, 1972, the maximums prescribed may be divided into several categories: First, title insurance premiums; second, charges by title companies and attorneys handling closings for title examinations and for services other than insurance in a real estate transaction; and third, charges payable in a real estate transaction to third persons over which none of the parties to the transaction have control.

Each of these categories has aspects which must be separately discussed; but it is important to note that they, in the aggregate, do not constitute the major expense to the home buyer when he effects settlement of his purchase. The most significant items, to him, are transfer and other real estate taxes, real estate broker's commissions, and "points" charged by lenders. In the end, the closing costs, as distinguished from all "settlement costs", including title insurance, are a relatively small part of what the buyer or seller must pay in effecting a sale and transfer of real estate. What concerns the home buyer is the amount of money he must bring to the closing in addition to the cash portions of his purchase price. For the most part, criticisms and complaints of home buyers arise from the fact that they learn, after their sales contract is signed, that they need substantially more than their "down payment", and mistakenly attribute all of this to the title company or attorney. It has not been adequately explained publicly that the title company or the attorney is merely acting as a collecting agent for most of the larger part of the buyer's extra expense.

In the search by state, county and local governments to tap additional resources for revenue, most government authorities have levied transfer or recording taxes.

In Montgomery County, Maryland, for example, the transfer taxes borne by the buyer of a \$25,000.00 home are reported to us as follows:

State recordation tax (\$4.40 per M).....	\$110.00
State transfer tax (1/2 of 1%).....	125.00
County transfer tax (1/2 of 1% [*] /).....	125.00
	<u>\$360.00</u>

By comparison, it is reported to us that at the prevailing rates, the services of the title examiner and insurer will, in Montgomery County, Maryland, cost the buyer --

Title examination	\$137.50
Title insurance	87.50
Closing fee	40.00
	<u>\$265.00</u>

Even where the tax is paid at another level, as in the instance of the acquisition of land by a developer, the tax paid is ultimately borne by the purchaser of a home; and again and again as one homeowner sells to another. It is not the purpose of this memorandum to debate the validity of this form of taxation, which many authorities believe to be bad, but it is a major element in the ultimate cost of a home. Rather than decreasing in both the number of localities where such taxes are found, or in the amounts of such taxes, the tendency is toward a marked increase throughout the country, probably because it is an easy and relatively non-political tax, paid only once or twice in a lifetime by the average citizen, if at all.

*/ If the sale price is \$35,000.00 or more this tax is 1%. If less than \$20,000.00 there is no tax. In some states these taxes are higher; some lower.

This Association hopes that the influence of the Secretary and the Administrator be exercised to discourage this form of taxation, elimination or reduction of which would be of marked benefit to the home buyer. While this is a separate large subject in itself, we suggest that the revenue results are not as great as the damage done by the burden imposed on a few taxpayers, who happen to be home buyers.

Thus, we reiterate, title insurance and closing costs, compared to the aggregate of taxes, real estate "points", commissions and other special charges made by lenders in some instances, are a relatively small part of what the home buyer must find the money to pay when he settles. It is our position in this respect that public criticism of the title industry has been largely the result of a misunderstanding.

TITLE INSURANCE PREMIUMS

The American Land Title Association strongly opposes the establishment of the maximum charges for title insurance in your proposals for the following reasons:

- (a) Such action exceeds the statutory authority of the Secretary and Administrator;
- (b) There has been no showing that the insurance rates presently being charged by title insurers in the areas affected are excessive or unreasonable;
- (c) There has been no proper determination by the Secretary that the rates proposed are reasonable;

- (d) There is no relationship between the proposed maximums and the cost of doing business;
- (e) The fixing of such rates is unlawful under existing Federal statutes;
- (f) The charging of such rates by title insurers would violate state laws.

No Authority To Reduce Insurance Rates -
A Construction Of The Statute

We have carefully reviewed and analyzed the language of the statute under which the Secretary purports to act, 12 U. S. C., §1710 (Note).

The statute contains two separate directives: Section (a) imposes on the Secretary and the Administrator of Veterans Affairs a duty to prescribe "standards governing the amounts of settlement costs" without definitions; and Section (b) directs the Secretary and the Administrator to undertake a joint study and make recommendations to the Congress with respect to legislative and administrative actions which should be taken to reduce and standardize settlement costs for all geographic areas. It is elementary that, being in derogation of the common law, such a statute must be strictly construed.

The references in Section (a) to "standards" covering the amounts of "settlement costs" allowable in connection with housing built, rehabilitated, or sold with FHA or VA assistance did not include any reference to title insurance premiums, nor under any reasonable interpretation of the statute authorize a reduction thereof.

As developed in a subsequent part of this memorandum, for the most part title insurance rates have been established by the title insurers under rate schedules filed, and usually approved, by state Insurance Commissioners;

and elsewhere, such rates have been competitively established. In the absence of evidence of violations of antitrust laws, state or federal, we feel that there is a presumption, amounting almost to a conclusive presumption, that the title insurance premiums presently being charged are fair and reasonable. The publicity attending the issuance of the proposed maximum rates has made clear that your Department comprehends that the imposition of the rates prescribed would effect a reduction, presumably including insurance premiums. This is true and we think such result is beyond the authority of the Secretary.

In that same statute, the Congress dealt in Section (b) specifically with the subject of "reduction" of settlement costs. It contemplates that the joint study which the Secretary and the Administrator are to make will be a matter for further review before formal legislative or administrative action is taken on any recommendations contained in it. Missing from Section (a) of the 1970 Act is the word "reduction". This seems to us to be important. Whatever Congress may have meant by prescribing "standards", even if it included the concept of fixing maximums, it certainly cannot literally be construed to authorize, much less require, a reduction in title insurance premiums.

The Legislative History of this statute, as the same appears in Senate Report 91-761,^{1/} fortifies our views in this respect. Bearing in mind that your present regulation (Section 203.27 of Title 24, CFR) directly

^{1/} U. S. Cong. & Admin. News, Vol. 2, 91st Cong., Second Sess. 1970, pp. 3505-3506

treats this subject, subsection (a)(3) therein authorizes the mortgagee to collect "reasonable and customary amounts" for, among other things, title examination and title insurance. The words "reasonable and customary" can have but one meaning in the context of our present consideration. Certainly, customary charges are those which are generally presently applicable -- not less than such customary charges. And in the "Legislative History" of this statute (U. S. Code, Title 12, Sec. 1710, Note) as the same appears in the Senate Report, we find the following:

"FHA and VA presently do pay some attention to closing charges, and attempt to protect individual borrowers from having to pay more for a particular service than is generally customary in the local area involved. The committee believes that this practice should be continued and that procedures should be developed to provide helpful information about such charges to prospective borrowers along the lines discussed above in connection with information on borrowing costs." [Emphasis supplied]

U. S. Cong. & Admin. News, supra, p. 3506

It is apparent that the Congress in directing the Secretary to promulgate "standards" governing the amount of settlement costs, never intended that such standards once promulgated would operate to reduce the present costs of title transfers, if such reductions resulted from maximums set below "customary" charges. A reading of the Report makes abundantly clear the expression of the Committee, that to protect the individual borrowers from having to pay more for a particular service than is generally customary in the local area involved, was a practice that they intended to be continued.

These expressions, without more, negate any inference that the Secretary of HUD and the Administrator of VA were authorized and directed to reduce closing charges below that which is generally customary in a given area. The ultimate end of these activities is certainly to develop a simplified and less expensive procedure to transfer real estate title; that it is equally clear that Congress contemplated that the administrators would submit their findings and recommendations as to actions thereafter to be taken to reduce and standardize settlement costs, prior to a unilateral and arbitrary reduction of these costs by administrative fiat. Whatever may be the result of pending consideration being given by Congress to this whole subject, it is clear to us that the Secretary's proposals, insofar as they affect title insurance premiums, go beyond the authority of the enabling statute.

No Authority To Deal With Title Insurance
Rates Specifically

If Congress had intended that the Secretary and the Administrator should fix rates for title insurance, it could easily have said so directly. As we have heretofore asserted, there is nothing whatever in the statute under which your proposals are issued which specifically refers to title insurance or insurance premiums. Dealing separately with that part of the proposals which fix maximums for title insurance, therefore, the negative intent of Congress in this respect must become more than statutory construction; and Congress has expressly provided in

Title 15, of the U. S. Code, in §1012, that:

"No Act of Congress shall be construed to invalidate, impair or supersede any law enacted by any state for the purpose of regulating the business of insurance. * * * unless such Act specifically relates to the business of insurance * * *."

We do not see how a more apposite reference can be made to discover Congressional intent. In July, 1947, by the foregoing Act, Congress had made clear that no enactment of it is to be extended by construction to include insurance, in any situation in which the states have laws regulating the business of insurance. In §1011, of the same chapter of the Code, Congress has declared its policy to be that the regulation of insurance is to be left to the states. All states concern themselves with the regulation of title insurance. ^{*/} Certainly, in all of the areas to which the proposed regulations relate, there are state Insurance Commissioners, and in most of those areas, the title insurance companies have filed schedules and to which they must conform, as a condition precedent to their doing business in those states.

It is true that these regulations are couched in terms, or framed in such manner, that they appear to be no more than conditions under which the Federal Housing Administration and the Administrator of Veterans' Affairs will approve the issuance of commitments for FHA and VA insurance of mortgage loans. Notwithstanding the external appearance of this device, as to insurance premiums especially, there is no escape from the obvious fact that the fixing of insurance

 */ In Iowa there is no statutory authority for the writing, in that state, of title insurance.

rates in FHA and VA cases would fix such rates in all cases. Almost all states which regulate insurance in any way require insurance companies to file schedules of rates and substantially all of them will be operating under statutes which, as in Maryland, for example, provide in one form or another, that:

"No person shall lawfully collect as premiums or charge for insurance any sum in excess of or less than the premium or charge applicable to such insurance, in accordance with the applicable classifications and rates as filed with and approved by the Commissioner * * *". [Emphasis supplied]

§230, Maryland Insurance Code,
Article 48A of the Laws of Maryland

Or, as in Virginia, after a provision similar to the Maryland Code, it is provided:

"Title insurance risk rates shall be reasonable and adequate for the class of risks to which they apply, and shall not be unfairly discriminatory between risks involving essentially the same hazards and expense elements. Such rates may be fixed in an amount sufficient to furnish a reasonable margin for profit * * *". [Emphasis supplied]

§38.1-728, Code of Virginia

What, then, happens to all those persons who buy homes without Federal assistance? First, assuming that under these state laws the title insurance companies might somehow find it legally possible to charge the rates

you have prescribed in your proposals in FHA and VA cases, how do they treat all other home buyers? Legal aspects aside, how can it be a proper governmental function for an Agency knowingly to require the self-supporting citizen to be at a government-ordered disadvantage as compared to other citizens? If this does not amount to a denial to the former of an equal protection of the laws, a subject which may very well also be ultimately directed to the courts, it must be a primary consideration of the Administrator as a matter of governmental policy.

In light of the foregoing, it is easily demonstrable that, as to title insurance rates, the proposed regulation is actually unlawful both under Federal and state law. And again, even if some strained rationalization may be found to persuade the courts to sustain the Constitutional validity of them, the proposed regulations simply do not stand up to the tests required for administrative action.

Inadequate Administrative Due Process

Once again we assert that this memorandum is not intended to be a challenge, in the legal sense such as would occur in the courts, of the Constitutional aspects of the maximum rates and charges, not only of title insurance premiums, but all the other charges with which the proposal is concerned.

Nevertheless, as an appeal to sound and fair administrative policy, we urge that the procedures being followed by the Secretary in this matter fall short of what is required, in that:

- (a) There has been no hearing, and one is apparently not contemplated;
- (b) So far as is known, there has been little, if any consultation with the title industry -- including in that term the lawyers whose practices and charges will be affected;
- (c) There has been no specific finding that the rates and charges now obtaining are excessive or unreasonable;
- (d) There has been published no finding that the rates and charges prescribed in the proposals are reasonable;
- (e) There has been no publication of the evidence on the basis of which the Secretary and the Administrator have made "estimates of the reasonable charges for necessary services involved in settlements for particular classes of mortgages and loans";
- (f) In any event, there has been no study of the costs of doing business of title companies and lawyers, a necessary condition precedent to a determination whether the rates and charges prescribed leave a fair return of profit for equity owners in their business.

These proposals constitute a rate-making process. In respect to title insurance, the attempt at rate making embodied in the proposals ignores entirely the major reason for insurance, i.e., providing a finan-

cially responsible guarantor of the buyer's title. To this end, any rate making process must take into consideration the solvency of each title underwriter. All effective insurance regulation, in great detail, concerns the maintenance of solvency to a degree necessary to provide to the holders of policies that financial responsibility which enables them to a reimbursement for damages resulting from the human and other errors which occur in certifying titles. It is elementary that solvency will be affected amongst the title underwriters if they are compelled to write a substantial portion of their risks at less than cost.

These proposals affect not only transactions involving Federally-assisted loans, but transactions involving all loans to home buyers. This is true, in the first instance, with respect to rates for title insurance since, as we have already demonstrated in this memorandum, the title insurance companies are prohibited from charging rates other than those fixed in their schedules filed with the several state Insurance Commissioners, and they are prohibited from arbitrarily discriminating between their customers where the risks are the same. But as to all other charges for the necessary services in real estate closings, the members of the industry could not, as a matter of business policy, make a different charge to home buyers who do not avail themselves of government assistance, and another to those who seek no such aid. In this respect,

it is apparent that this memorandum represents a brief for the latter class, who (it seems to most of us) should not be discriminated against.

The label the Secretary places upon these proposals -- as affecting only Federally-assisted loans -- is not decisive. The courts will look behind the label to the substance of the proposals. Thus, the Supreme Court, finding that a regulation to control contractual relations of licensees through control of the issuance of licenses was in fact a regulation of their contracts, said:

"The particular label placed upon it by the Commission is not necessarily conclusive, for it is the substance of what the Commission has purported to do, and has done which is decisive. Powell v. United States, 300 U. S. 276, 284, 285, 81 L. Ed. 643, 649, 650, 57 S. Ct. 470; American Federation of Labor v. Nat. Labor Relations Board, 308 U. S. 401, 408, 84 L. Ed. 347, 351, 60 S. Ct. 300."

Col. Broadcasting System, Inc. v. United States, (1941), 315 U. S. 407, 416, 83 L. Ed. 1563, 1570

And see, for example, Nat. Motor Traffic Assn. v. U. S., 268 F. Supp. 90, affd. 393 U. S. 18, 89 S. Ct. 49, 21 L. Ed. 2d 19 (1968); Pharmaceutical Mfrs. Assn. v. Finch (1970), 307 F. Supp. 858.

Far from any determination that the existing rates being charged for title insurance in the areas affected are excessive, the

Secretary and Administrator have made no determination, known to the public, that the rates for title insurance or other charges fixed in the proposals, are reasonable maximums; and there could be no such determination on the basis of the facts known to this Association.

It is not necessary to cite many authorities to demonstrate the principle that, under our system of law, maximum rates for any services may not be governmentally prescribed without allowing a fair return to him who performs the service; and no such determination of what constitutes a fair return can possibly be made without knowing what the cost of performing that service is. We know of no efforts on the part of your Office to determine the cost of doing business of title insurance companies; and we assume that it is a fact that you have not done so. There certainly is no express set of findings and conclusions by the Secretary and the Administrator, at least made public; and it is equally an elementary principle of law that the availability of evidence upon which the Secretary and Administrator have acted must be available to those affected, with a reasonable opportunity to be heard as to the validity of the evidence upon which they act, and an opportunity to submit evidence on their own part.

The language of Prettyman, Jr., in his Opinion for the court in Jordan v. Am. Eagle Fire Ins. Co., 169 F. 2d 281, 83 U.S. App. D.C. 192,

will suffice to epitomize our position. There, the question raised was whether the Insurance Commissioner for the District of Columbia had the power, without a hearing, to order a reduction of fire insurance rates. The Commissioner held a hearing which he announced was a "matter of grace" and not required of him, but he refused to reveal the basis for his judgment that existing rates were excessive. The Court examined with scholarly care the due process aspect of the matter, saying at pp. 199, 200:

"It is unnecessary to repeat here the classic consideration of rate-making in *Munn v. People of Illinois*. It was there pointed out that he who enters upon a business in which the whole public has a direct and positive interest, must contemplate that the regulation of that business may change from time to time. But to that concept the constitutional limitations of the due process clause must be added. Those limitations are both procedural and substantive. That the procedural necessities include the revelation of the evidence upon which the disputed order is based, an opportunity to explain that evidence, and a conclusion based upon reason and not merely arbitrariness, is soundly established by a long line of cases. In respect to substance, the Court has lately redefined the essentials necessary to the investor interest in rates. They are that there be enough revenue for operating expenses, capital costs, and sufficient return to the equity owner to assure financial integrity of the enterprise, so as to maintain its credit and to attract capital." [Emphasis supplied]

Thus, wholly aside from the law of the matter, it seems that a hearing and revelation of the basis of the proposals, is a matter of fair play. The burden is not on the title insurers to demonstrate that their existing rates are fair and reasonable; the statute expressly places that burden upon the Secretary and the Administrator. If the burden were on the title insurers,

that burden has been fully met by the known two circumstances, namely, that their rates are presently subject to filings with the several states of rate schedules which require that they be fair and reasonable, so that they bear the initial prima facie status of having been so found by such state Commissioners; and by the fact that they have been fixed in intense and continuing competition.

It is fair for those affected by these proposals to assume, on the basis of the foregoing, that the Secretary and the Administrator have wholly failed to follow the Congressional mandate in subsection (a)(3) of Section 1710 that the standards fixed "be based" on their "estimates of the reasonable charge for necessary services involved in settlements".

Sooner or later, in court or before the Department, all those affected by the proposed regulations are entitled to a hearing, where the reviewing court is directed to decide all relevant questions of law, including whether the proposals are arbitrary. Title 5, U.S. Code, §706. We urge that the Secretary himself direct that any order putting the proposals into effect shall be stayed until a full opportunity for a hearing has been provided. Such an administrative determination is in sound conformity with the purposes for which the Administrative Procedures Act was adopted. See American Airlines, Inc. v. C.A.B., 123 U.S. App. D. C. 310, 359, F.2d 624 (1966), where the court cites (in Footnote 21) the Final Report of the Attorney General's Committee on Administrative Procedure:

"Hearings are now generally held in connection with the fixing of prices and wages, . . . the prescription of commodity standards, and the regu-

lation of competitive practices. The regulation of all of these matters bears upon economic enterprise and touches directly the financial aspects of great numbers of businesses affected, either by imposing direct costs or by limiting opportunities for gain. Appreciation of these effects, both by business men and government officials, seems to be the chief cause of the increased use of hearings in administrative rule making.

"The Committee believes that the practice of holding public hearings and the formulation of rules in the character mentioned above should be continued and established as a standard administrative practice, to be extended as circumstances warrant into new areas of rule making. The difficulty of defining necessary exemptions from any general prescription argues strongly, however, against the wisdom or feasibility of a statutory requirement that hearings invariably precede promulgation of a regulation. . . . Here, as elsewhere in the administrative process, ultimate reliance must be upon administrative good faith -- good faith in not dispensing with hearings when controversial additions to or changes in rules are contemplated." 123 U. S. App. D. C. at 318, Footnote 21.

We have tried to find some correlation between the maximum rates in the Secretary's proposals for title insurance and other services, and those which now obtain in the six areas thus far dealt with. We find no basis for concluding that the closing cost study of HUD constitutes the investigatory basis for the Secretary's "estimates" of what are or are not reasonable or excessive. On the contrary, a comparison of the HUD survey and the maximums contained in the proposals conclusively establishes that the Secretary arbitrarily has reduced prevailing rates.

A summary comparison of the proposed HUD rates and the prevailing rates for each of the affected areas would reveal marked differences in procedures and handling of title matters in the several areas affected. For example, in some states, the title companies perform title closing and escrow services, while in others the contrary is true; and these practices differ even in individual areas of the same state. In some places there is a single, all-inclusive charge made for most necessary services, including title examining, closing and insurance. Therefore, it is almost impossible for anyone to draw a conclusion that the prescribed rates are reasonable or that prevailing rates are excessive.

The regulation by prescribing maximum rates in title closings at the Federal level is unprecedented, as it was in the matter of natural gas rates as described in the Opinion of the Supreme Court in Permian Area Rate Cases, 390 U. S. 747, 20 L. Ed. 2d 312, 88 S. Ct. 1344. From the Opinion of the Court in those cases, we learn that an administrative action where the agency holds hearings, takes testimony and receives evidence submitted by the parties affected, weighs both the interests of the consumer and the producer, and then fixes maximum rates, carries with it the benefit of a presumption of reasonableness. But the reverse is also true: Without such investigation and inquiry, and without findings from the evidence justifying the rates prescribed, and without full revelation of the

basis of the agency's conclusions, no such presumption obtains.

Where, as here, there have been no hearings; the industry has not been effectively consulted; where there are no findings of fact from which it can be concluded that prevailing rates and charges are excessive in any of the areas; where no publication has been made of the basis for the Secretary's actions; and where prevailing rates and charges are the product of healthy and open competition, the Secretary's proposed order does not and cannot have a legal aura of reasonableness.

To this Association, it seems that the same lesson has been learned in the matter of the fixing of rent ceilings by FHA on Federally-assisted projects. There the rent ceiling was fixed at the rate prevailing on the statutory date. The court held this proper. It is clear that a rent ceiling of less than the prevailing rate would probably have been fatal without a finding that the prevailing rate was excessive, or resulted in excessive profits to the landlord, a fact which could only be ascertained after it was found on the evidence that the rate fixed would still provide the landlord with a fair return on his investment. So it was in Northwood Apartments v. Brown, 137 F. 2d 809 (1943). We are not unmindful of the principle, well stated in Bowles v. Willingham, 321 U. S. 503, 83 L. Ed. 892, 64 S. Ct. 641, that price-fixing legislation is not improper because it is on a class rather than an individual basis. If the rates and charges are reasonable for an industry as a whole, the fact that one of the competitors cannot live with those rates does not invalidate the regulation. But in the title industry, where there is intense competition, and no semblance of

monopoly, the prevailing rates have, it may be assumed, driven the weak ones from the field. Therefore, the opposition of this Association to the proposals of July 4, 1972 is not designed to protect any particular member of the industry, but the industry itself.

Charges of Persons Not Parties To The Closing
And Not Performing Services Directly Related
To Title Examination And Insurance

Included in the items for which maximums are set are charges made by surveyors, credit reporting agencies, and those who inspect for infestations such as termites. These charges are beyond the control of the title examiner and the closing or settlement officer, or attorney. Their charges are for services performed under a separate contract with the buyer, seller or lender.

This Association has no way of ascertaining whether the prevailing charges for their services are excessive or whether the maximums fixed in the proposal are reasonable, except by comparison with prevailing rates. But the difficulty of their respective functions varies from case to case, and no provision is made in the proposals for any departure from the rates fixed. If charges for credit reports are regulated under some other provisions of the Housing Regulations or by statute, there is no need for imposing, in these proposed regulations, any duty on the title industry to enforce them; and to do so would be an unwarranted burden on closing officers and attorneys, already overwhelmed with the requirements of such statutes as the Federal Truth-In-Lending Act (15 U. S. Code, §1601, et seq.) and state and local laws

relating to the same subject, recordation and taxation. Such compliance requirements increase the cost of performing the title services, and ultimately, to the extent they are unnecessary, will increase the ultimate costs of the home buyer.

And, in the case of these items, the tendency will again be toward discouraging surveyors and others, in effect, causing them to shy away from FHA and VA loan cases.

ECONOMIC FACTORS

All will agree that the proposals of July 4, if adopted by the Secretary and ordered into effect, will have a major impact upon all of the persons affected. We respectfully submit that the total impact will not be good.

The industry, represented by this Association, is not made up of a few large title insurance companies, with unlimited financial resources. However much may be the popular conception of this industry, the fact is that, of approximately 1900 members of this Association*, 93 are title insurance underwriting companies, of which only a baker's dozen can be said to be of major national scope. Actually, although the Association's membership consists of most of the most-active commercial companies operating in the field of examining and insuring titles to real estate, a little more than 1800 of our members are either abstract companies or abstract-agent companies. This means that 95% of the Association's members are small company operations. Of these latter, two-thirds employ fewer than 5 persons, and 87% employ fewer

*Not all persons or firms engaged in the business of examining, abstracting or insuring titles to real estate are members of this Association.

than 10 people on their staffs. Only 1% employ more than 40 persons. 80% of the company-members surveyed grossed less than \$100,000.00 in 1970; as a matter of fact, 45% of them grossed less than \$25,000.00 in that year. 73% of them reported their capital and net worth as being less than \$100,000.00; and 71% of the participants in the survey reported that their net taxable income for 1970 was less than \$25,000.00.

The foregoing figures are sufficient to demonstrate that in addition to insurance premiums, the regulation of the other items of closing costs, too, carry their effect down to a host of responsible, but small businessmen throughout the country. It is perhaps going too far to say, at this stage anyway, that these people would be put out of business. What we do say is that neither you nor this Association knows whether they will or not. Neither this Association nor the Secretary has made any kind of a study of their cost of doing business. But, prima facie, there certainly is no showing that their profits are excessive.

On the contrary, it is easy to demonstrate, if the opportunity presents, that in every area each of these small businesses is intensely competing with the other and, insofar as the closing costs and fees are concerned, their charges are not set by the big insurers. The elementary facts of competition drive their individual charges to the lowest level reasonable, with allowance for a profit margin. Therefore, we can see no justification, on the present evidence, for a reduction in these charges at all. There has been no assertion -- in fact publicity emanating from the Congressional sponsors of these proposals and other legislation in the field expressly denies --

that the title industry is reaping excessive profits from this business. The fact is known to be that the actual return on investment, even of the big companies, is modest. Therefore, the statements in the public press that home buyers may "save millions of dollars" as a result of these proposals would be true, if at all, only at the expense of those who perform the services. But the "saving" would be short-lived if title companies, abstractors and lawyers are driven from the field. The services they perform are necessary, as the legislation acknowledges.

In real estate transactions, the title must be abstracted and this is a complicated process. The public records must be examined, analyzed and reported, boundaries must be established, proper conveyances must be drawn and properly executed, and someone must reach a responsible conclusion that the title of the seller is a marketable title and that it has been legally and finally transferred to the buyer. Where loans are involved, someone must do all the things necessary to assure that the lender has a valid lien to secure repayment. With the Truth-in-Lending Laws, state, federal and local, this operation has become an expensive -- and in some instances, a risky -- process. If someone must do it, it is fortunate that it is done by private enterprise. County Clerks and Recorders are not equipped to do it; and if they did, the taxpayers generally would be bearing the cost. If, as we have said, it is a necessary service, and if it is to be done by private enterprise, mostly small enterprise, those who perform these services must be allowed a fair return.

The net effect of establishing maximums for charges which are unrealistic and less than reasonable cannot, for more than a short period,

compel title companies and lawyers to continue to do the business at a loss or at minimal returns. They will turn to other things. Certainly, if they can barely survive under these proposals, as seems likely to be the best that can be made of them, the tendency in any event across this industry and all related industries, including those who lend money, will be to shy away from those home buyers who have Federal assistance. And after all, if that is the net effect, it seems to this Association to be wholly inconsistent with the ultimate objective and purpose of the entire Federal Housing program.

We know of no report or study either by Congress or by the Department of Housing and Urban Development which evaluates and assesses the impact of these proposals. It is apparently taken for granted that, because the Secretary orders reductions in closing costs, the home buyer will, inso facto, save money. But, in the long run, the setting of rates below what is reasonable and fair for those who perform the services, may very well have the result of driving the home buyer to finding financial assistance, if he can find any at all, from sources not in the FHA and VA program. If so, the cost to the home buyer may be substantially more, not less.

SUMMARY AND RECOMMENDATIONS

On the foregoing grounds, the American Land Title Association must protest the issuance by the Secretary and the Administrator, of an order putting into effect the proposals published on July 4, 1972.

We believe them to be unwise and not in conformity with the primary objectives of the Emergency Home Finance Act; but we also submit that,

to do so without a fair hearing, without specific and express findings, based upon evidence, including submissions by the industry, that prevailing rates and charges are excessive and that no other rates and charges than those fixed in the proposals are reasonable, would exceed the authority granted in the enabling statute, 12 U. S. Code, Section 1710 (Note), would otherwise violate the rights of those engaged in examining and insuring titles to real estate, including lawyers; and would unreasonably discriminate against a great body of unrepresented home buyers who do not seek Federal financing assistance.

The Association recommends:

1. That the title insurance be wholly eliminated from the proposed regulation;
2. That charges made by persons performing services not directly related to title examination and insurance (such as surveyors, credit reporters, and termite and infestation inspectors) be wholly eliminated from the proposed regulation;
3. That until investigation and hearings are completed as hereinafter proposed, the establishment of any standards be withheld, but in no event should such standards undertake to reduce the charges for title examination, closing fees, attorneys' fees, etc., below prevailing rates in the areas affected as of the 4th day of July, 1972;
4. That an appeal procedure be prescribed under which, by a showing of special circumstances, application may be made for a greater rate or charge;

5. That, before any order is issued or regulation adopted which fixes standards for title services other than insurance premiums (regulation of which we have asserted to be unauthorized), hearings shall be held wherein a full inquiry is made as to the reasonableness of prevailing rates and charges generally or in any particular area, including an inquiry in depth as to the cost of performing the services and an allowance for a fair profit for all reasonably-efficient persons who perform such services;
6. That in such hearings, members of this industry be permitted to submit evidence or testimony relevant to the reasonableness of rates and charges for title services, and be entitled to know and comment on all evidence or testimony on the basis of which the Secretary and Administrator propose to act;
7. That, solely on the basis of the record made in such hearings, the Secretary and Administrator shall make specific findings as to the reasonableness or excessiveness in any area affected of the rates and charges then prevailing; and issue no order or regulation except in conformity with such findings.

As we have indicated, the Association is ready, promptly at your request, to appoint such committee, or committees, composed of knowledgeable and experienced people, as may be helpful to enable you more directly to consult with the industry.

Respectfully submitted,

AMERICAN LAND TITLE ASSOCIATION

By: James O. Hickman
James O. Hickman, President

Thomas S. Jackson
THOMAS S. JACKSON, General Counsel
1828 L Street, N. W.
Suite 1111
Washington, D. C. 20036



Appendix B

American Land Title Association

November 9, 1972

Office of the President
James O. Hickman
Senior Vice President
Pioneer National Title
Insurance Company
69 West Washington Street
Chicago, Illinois 60602
(312) 346-3282

The Honorable Eugene A. Gullledge
Assistant Secretary for Housing,
Production and Mortgage Credit
c/o Rules Docket Clerk
Department of Housing and Urban Development
451 - 7th Street, S. W.
Washington, D. C. 20410

Re: 24 CFR Part 203
Docket # R-72-197

Dear Mr. Gullledge:

On October 15, 1972, there was delivered to your office a Memorandum on Behalf of the American Land Title Association with respect to your published proposed Maximum Settlement Charge's. In that Memorandum the Association reserved the right to submit supplemental material based on the study then in progress by Arthur D. Little, Inc.

We take the liberty of transmitting herewith a preliminary report from Arthur D. Little, Inc., together with its covering letter which summarizes certain of its conclusions.

We request that the enclosures be included in the record in the above mentioned docket and be treated as a part of, and supplemental to, the Memorandum previously submitted by this Association.

We take the liberty of calling your attention to the observations in Little's covering letter that your staff has been cooperative in

providing them with an understanding of your methodology and the background factual material on which your conclusions were based.

Respectfully yours,

AMERICAN LAND TITLE ASSOCIATION

By: James O. Hickman
James O. Hickman, President

Thomas S. Jackson

Thomas S. Jackson, General Counsel
1828 L Street, N. W.
Suite 111
Washington, D. C. 20036

Arthur D. Little, Inc.

ACORN PARK • CAMBRIDGE MASSACHUSETTS 02140 • (617) 864-5770

1 November 1972

Thomas S. Jackson, Esquire
General Counsel, ALTA
Jackson, Gray & Laskey
1828 L Street, N. W.
Washington, D. C. 20036

Dear Mr. Jackson:

At the request of the American Land Title Association, Arthur D. Little, Inc., is currently analyzing the procedures applied by HUD (and VA) in reaching their determination of maximum fees for the various elements of title-related services. We have reviewed the HUD methods with respect to the technical aspects of their econometric methodology and have also considered the manner in which the study was employed as a basis for determining public policy and (implicitly) for regulating the title insurance industry. The full cooperation of HUD officials facilitated our understanding of their methodology and enabled us to analyze the data they collected. Although our analysis is not yet complete, the purpose of this letter and the enclosed Working Memorandum ("An Exploratory Overview of the HUD/VA Analysis of Title Related Costs") is to review our initial findings and specify the areas we believe need further investigation.

The enclosed memorandum presents a detailed description of the HUD procedure which, for ease of reference, may be summarized as follows:

HUD measured the average payment of buyer and seller for title-related services in each of the 50 states. Using regression analysis, HUD selected 14 states whose average title costs per dollar of house selling price was the furthest below the regression function. HUD considered the price levels found in these states as the appropriate basis for determining "reasonable and necessary" title-related charges. Detailed data from these 14 states became the basis of an analysis of closings covering approximately 1400 transactions. From those transactions a second model (set of equations) was derived, relating

closing costs to various explanatory variables. By solving the equation for the values of the explanatory variables for each SMSA, the HUD researchers obtained an estimate of the *average* "total title-related costs" and *average* "title insurance (risk premium) plus title examination costs" in each of six SMSA's. Through judgment, negotiation, and, most importantly, the HUD researchers' own selection of a "reasonable" value for the title insurance risk premium, the output of the equations for each SMSA -- the regressions' predicted *average* prices -- was turned into the proposed price maxima for the several title-related services.

(The fact that the HUD study was an analysis of the pattern of prices charged for, rather than the costs of, providing title-related services may have been obscured by the phrase "closing costs." As used in the HUD study, closing costs were the amounts paid by both buyer and seller for the various elements involved in closing real estate transactions -- title searches, title examination, title insurance, lawyers fees, etc. To the economist, these elements comprise the price charged for title-related services. In the economic or regulatory sense, however, the costs of title-related services would be the expenses incurred by the providers of such services.)

From the analysis we have completed to date and our experience in econometric and regulatory practice, we find fundamental shortcomings in using the HUD methodology as a basis for public policy determination or price regulation. Our primary conclusions are as follows:

- 1) The attempt by HUD to establish maximum allowable prices for the various title services by examining the pattern of prices charged in selected states, rather than by determining the actual costs and fair profit of providing the services in the specific areas being regulated, is without precedent and is a theoretically unsound basis for regulation. Observations on prices paid may have been the only data which HUD could feasibly collect and study, but this fact does not overcome the absolute need to understand costs and profits in order to provide proper regulatory guidelines.

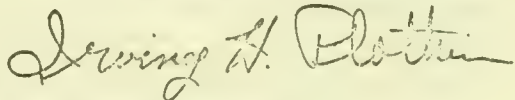
- 2) HUD apparently believes that the first part of their econometric methodology identified states where the prices charged for the various title services were "reasonable and not inflated by unnecessary services" and, further, that their final regression equations indicated maxima that are "reasonable and necessary." However, the methodology did not identify or measure "reasonability" or "necessity" of services and charges; rather, the "finding" of unreasonable and unnecessary prices entered the analysis by assumption, and the resulting maxima were deemed "reasonable and necessary" by assumption. In fact, interpreting the 14 states which were furthest below the regression equation as having "reasonable" prices contradicts standard econometric practice and was justified by HUD only by the adoption of the assumption that differences in prices for title-related services do not reflect differences in the value of services received or the costs of providing such services, but rather arise from unnecessary or excessive services and charges.
- 3) Even if the above defects were not present, the HUD methodology could not be used to set maximum title-related prices, because its results are consistently downward-biased. This has caused an understatement of the "fair" or "reasonable and necessary" average title costs in the six SMSA's for which maxima have been proposed by HUD and VA. The techniques used for sampling and data handling are partly responsible for the downward bias. Another important reason is that HUD has ignored certain factors that cause the prices and costs of title-related services to vary from one area to another, such as the following:
- Differences in the quality of county records;
 - Differences in the cost and time needed for title searching (because of variations in the number and location of relevant records);
 - Regional differences in the attitudes of lending institutions toward mortgage loans -- i.e., whether to retain them in their portfolios or resell them in the secondary market.

- 4) Setting aside the above objections, we find that the HUD researchers unjustifiably selected the *average* price indicated by their econometric results as the basis for establishing the *maximum* allowable price. Their identification of *average* with *maximum* prices is especially puzzling when one considers that *their* regression results indicate that in each SMSA "reasonable and necessary" charges (by HUD definition) will in many cases be at least \$100 greater than the estimated average values. Thus, even if one accepted the HUD approach in its entirety, the "appropriate" maxima are substantially higher than the ones actually proposed by HUD.

As noted above, the enclosed Working Memorandum discusses some of these points in greater detail. It also discusses (pages 18-20) as an analogy a method of controlling government expenditures which, we believe, illustrates the pitfalls inherent in HUD's approach to controlling title-related costs.

We emphasize again that our work is still in progress and, based on our initial findings, additional meetings will be sought with HUD and further data analyses will be undertaken.

Very truly yours,



Irving H. Plotkin
Senior Economist

IHP/jmb

Enclosure

WORKING MEMORANDUM

For your information and review of work in progress. The findings and methods may be modified or superseded as our work proceeds.

AN EXPLORATORY OVERVIEW OF THE HUD/VA ANALYSIS
OF TITLE RELATED COSTS

I. Introduction

The purpose of this working memorandum is to present a preliminary outline of the methods of analysis used by HUD/VA in determining what the maximum fees for closing should be and of some of the problems that arise. Because of the limited time available our understanding of the process used is based primarily on one meeting at HUD with Mr. Chester Foster, Chief, Statistical Analysis and Research Branch, and Mr. Dale Whitman. In the course of setting out this understanding, several issues that were not clear as a result of our discussion with HUD officials have arisen; only a few of these have been checked with Mr. Foster. It is our intention to clarify these issues by additional meetings with HUD officials before proceeding with additional analysis and comments.

Briefly, data was collected from FHA/VA transactions in 50 states and the District of Columbia. The data covered approximately 7200 transactions in March 1971 and was roughly 15% of the transactions handled by FHA/VA in that period. The data forms are shown in the *HUD/VA Report on Mortgage Settlement Costs* (January 1972).

This data was initially summarized by states and a subset of 14 states was chosen after manipulation of the data. The notion was that the procedure would eliminate states in which "excessive or unnecessary" charges were being made, so that some states with "normal" or "nearly normal" charges could be identified for further study.

The individual transactions in the 14 states were carefully reviewed and approximately 1400 usable transactions were generated. The data on these transactions was used to develop equations to predict the "title related costs" as a function of several variables and also to predict the sum of "title examination and title insurance costs" as a function of several "independent" (explanatory) variables. The equations were then used in conjunction with the explanatory variables from SMSA's in other states to predict what the "transaction costs" ought to be in these SMSA's.

Finally, "reasonable" values of charges for closing fees and title insurance for each of the "high cost areas" were selected and subtracted from the predictions to arrive at supposedly reasonable charges for title examination.

II. General Philosophy

We disregard for the time being the problems associated with setting maximum prices by looking at existing prices rather than by looking at costs and needed rates of return, problems which are of major magnitude.

The general philosophy underlying the approach taken is that, by assumption, title related costs in some areas are loaded with unnecessary and excessive charges and that the quality of the product is homogenous; so that one can view the lowest observed prices as more nearly fair prices (since by assumption they must have fewer unnecessary and excessive components) than moderate or high prices (which by assumption do have unnecessary and excessive components). With this philosophical framework it follows that one need not look at the nature or quality of or demand (need) for the product.

In addition, the general approach is based on a philosophy that there is no underlying difference in the cost of providing the services so any increase in price is indicative of "unnecessary or excessive" services or charges. For example, a title search is implicitly assumed to require the same effort regardless of the quality of county records or the history and nature of the property.

In our view this general philosophy is inadequate in many respects. While it is possible that "unnecessary and excessive" charges exist, we feel that neglecting the nature, quality, and demand for the product is basically dangerous. In the specific instance of title insurance, the demand for the product may be dependent on a large number of factors such as local tradition, the existence of adequate title laws, the special nature of the property, the nature of the mortgagee (e.g., is he buying the mortgage for investment or resale), the amount of equity invested by the owner, the rate of inflation of real estate prices, and so on. Identification of demand variables is particularly important when the prices for a large number of services are aggregated rather than studied individually.

Characterization of the quality of the product may also be important. For example, in some states there are instruments (called record guarantees, title guarantees, title certificates) which sell at prices lower than traditional title insurance policies but provide less assurance to the purchaser as to the validity of title. Further, title insurance policies may vary from state to state in their coverage. Thus ignoring the quality of the product may lead to the selection of "low price" areas which are also "low quality" areas.

Ignoring the effect of cost variability may, of course, lead to additional biases. Thus if the "low price" areas are areas with high quality public records, thereby making the examination costs and prices lower than average, the average price per examination will naturally be lower for these than for areas with poor public records, without implying that "unnecessary or excessive" charges are being made to the customer in areas with poor public records. The costs incurred and risks assumed will also vary with the difficulty of the underwriting problem and the nature of special risks involved; the balance between incurred costs and risk being determined by the procedures of the insurer.

Thus the general philosophy on which the analysis is based has potential biases which tend to make the estimated prices for "high priced areas" potentially lower than they ought to be and perhaps even lower than incurred costs.

III. The Data Base

The data base used for analysis consisted of a stratified sample of transactions on single-family, owner-occupied housing which were financed through FHA or VA and completed in March 1971. The sampling was done systematically by terminal digit of the transaction code, so the sample can probably be considered random. The sampling intensity was 10% for most cases, but in areas in which too few transactions were expected or in which more intensive study was contemplated, higher sampling fractions (up to 100%) were used. The sampling fractions were assigned at the FHA/VA office level and may not be the same for a whole state. The number

of transactions in the sample was about 7200; the estimated total number of transactions in the relevant period was 50,605; the overall sampling fraction was therefore about 14%.

For each transaction, the prices charged for specific components of settlement costs were recorded on special forms. The details are discussed in the *HUD/VA Report on Mortgage Settlement Costs*. The quality of the data is discussed to some extent in the report. It is of interest to note that in some cases there is good reason to doubt the accuracy of the data: for example, in Essex County, New Jersey, there were four transactions in the price range \$16-\$20,000, all four apparently with simultaneous insurance at an average premium of \$129; even if all four transactions had been at \$20,000, the premium would be over \$6.40 per thousand, and yet the Supplement to the report states (page III-B-20):

"Title insurance companies in New Jersey charge \$2.75 for a mortgagee's policy and \$3.75 per thousand for an owner's policy. On a simultaneous issue of both policies the \$3.75 rate, plus an additional \$10 fee for insuring the second policy, is charged. This is a net rate; the gross rate is \$5.00. The difference may or may not be passed along to the client buyer."

The inconsistent data could have been the result of improper recording on the original forms. Thus if the field personnel improperly computed the mortgagee premium on the basis of \$2.75 per thousand and the owner premium on the basis of \$3.75 per thousand and added an additional \$10 for issuance of a simultaneous policy (rather than the single net rate plus \$10), the total title insurance premium on an \$18,000 house would have been recorded as \$127, which is very nearly the \$129 reported for houses in the \$16-\$20,000 price range with simultaneous insurance.

Whether what appears on the form reflects what the buyer was charged or what the insurance company received, or is purely a calculated number cannot be judged from what is available to us. It appears clear, however, that the highest possible charge indicated by the description in the Supplement, which would be \$5.00 per thousand, is in general substantially less than the premiums obtained from the transaction records at all price levels, as may be seen by analyzing Table VIIa (page E-11) of the report. This kind of discrepancy should be thoroughly investigated before any conclusion on the soundness of the results can be rendered.

The data obtained on single transactions was used in conjunction with additional data in two regression models. These will be discussed in the following sections.

IV. The First Regression

A. Variables and Results

The purported purpose of the first regression model was to select from among the 50 states and the District of Columbia a subset with "low title related" prices. The District of Columbia (for which HUD ultimately proposed maxima) was actually dropped from the analysis as being highly atypical. The variables that HUD considered as likely to explain prices were:

- 1) The degree of urbanization in the state as measured by percent of population in the state which lived in urban areas, as defined by the 1960 census.
- 2) The population density in the state in 1960.
- 3) The percent change in population between 1950 and 1960.
- 4) The wage level in the state.

- 5) The predominant form of title assurance in the state, whether abstracting alone, abstract and title insurance, or title insurance alone.
- 6) The existence in the state of marketable title acts.
- 7) The degree of "duplication" of services.

The first four of these variables were quantified from government data, the next two were obtained from informed opinion. The seventh variable was separated into three components and was determined on the basis of transactions in the data base by a procedure which will be described in connection with the definition of the dependent variable. The actual variables selected to measure "duplication" were:

- a) The percent of transactions for which separate charges appeared for title examination and for title insurance.
- b) The percent of transactions for which separate charges appeared for attorneys (whether for buyer or seller) and for title insurance.
- c) The percent of transactions which had a separate charge for an escrow agent.

The dependent variable for each state was the ratio of the total title related costs to the total price of houses transferred. In the development of this variable the title related costs for all transactions in a given state reported by each reporting unit were summed, then divided by the sampling fraction which that office had used, and the results were then added together to compute the total title related costs for the state. The same procedure was used to compute the total price of housing units transferred in that state and the ratio of the two numbers was obtained as a percent. This method of computation leads to state averages that are

not biased because of variations in the sampling rate among offices and represents a sample of all transactions in which FHA/VA were involved.

A linear regression was performed, giving each state equal weight. The wage levels in the states and the percent change in population did not have predictive power. The population density had marginal predictive power. The only predominant form of title assurance which had predictive power was personal search with title insurance. The other independent variables (percent urban, marketable title, and the three "duplication of effort" variables) all had significant predictive power. The regression equation accounted for about 74% of the variance.

B. Comments on Variables and Results

The use of a ratio variable, such as that used in this case for a dependent variable, can create severe problems. In this case the use of the ratio of title related costs to price of housing aggregated over a whole state may have the following kinds of effects:

- 1) It may introduce spurious correlation (positive or negative) with the independent variable "percent urban."
- 2) It will introduce spurious correlation with variables that are themselves associated with need for services.
- 3) It will introduce spurious negative correlation with variables which affect "fixed" costs and also affect the price of housing.

Thus the choice of dependent variable makes the regression results difficult to interpret: the fact that wage levels are not a significant predictor of the ratio of title related costs to price of housing may be due to the fact that they are good predictors of both numerator and

denominator; the effect of "percent urban" may be larger or smaller than that indicated by the model because of the spurious correlation introduced, etc.

In addition to the foregoing, there are problems associated with the selection of the independent variables. The supplement to the HUD report indicates that the existence of Torrens registration systems as an important structural variable in determining title transfer practices and costs, yet this was not used as a variable in the analysis. The Supplement lists 12 states that presently have a registration system: Colorado, Georgia, Hawaii, Illinois, Massachusetts, Minnesota, New York, North Carolina, Ohio, Oregon, Virginia, and Washington (page II-A-4) and later adds that New York, Nebraska, North Dakota, South Dakota, and Virginia have registration statutes but have made little or no use of them. We therefore have ten states in which registration systems have been used to some extent. Five of these ten (Colorado, Hawaii, Massachusetts, Minnesota, and Ohio) are among the 16 states which showed deviations of 15% or more below the regression line, and five are among the other 34 states. Moreover, "Hawaii reportedly has the highest proportion of Torrens registration of any state" (Supplement page II-A-4) and also has by far the largest departure in the HUD measure of cost from the regression line in both absolute and percentage terms (the observed costs being 45% lower than those predicted). Failure to use this important structural variable may have far-reaching effects in the subsequent analysis.*

* A Mann-Whitney U-test indicates that when all states are considered the existence of registration is significantly associated with departures below the regression line, whether absolute ($p=.05$) or percent ($p=.02$).

Another important structural variable discussed in the Supplement but omitted in the HUD analysis is the nature of the lending institution. Lenders who purchase mortgages for the resale market tend to require mortgagee title insurance to improve the liquidity of the mortgage, while lenders who purchase mortgages for retention have less incentive to do so. This variable reflects on the demand for the product and should be considered. Thus the fact that Massachusetts and New Hampshire have substantially lower costs than predicted by the regression equation may result simply because mutual savings banks are a large factor and not one closing studied by HUD in these states had title insurance. This finding has no bearing on the actual cost of title insurance in those states.

Other important variables were not considered. For example, Missouri and Ohio both have title certificate guarantees that are not as comprehensive as title insurance policies and sell at much lower rates. The quality element of this difference was not considered and may account for the fact that both these states have costs lower than predicted by the regression equation.

In summary, then, the fact that important structural variables were not included in the analysis may have resulted in a regression curve that was substantially misplaced and even if the basic hypothesis were correct (i.e., if indeed the price variability exists solely because of unreasonable and unnecessary charges after adjustment for structural variables) may have led to the selection of a very atypical set of "low cost" states, thus leading to unduly low estimates of the title related costs in the second regression.

C. Use of the First Regression

The departures of the state ratios of "title related costs" to price of housing from the regression line were examined in both absolute terms and as a percent of the value predicted by the equation. Fourteen states that were "low cost" on the basis of this examination were then selected for a more detailed analysis which will be referred to as the second regression.

V. The Second Regression

A. Data and Procedure

The 14 states selected for the second regression were:

Alabama	Nevada
Colorado	New Hampshire
Kentucky	Ohio
Minnesota	Rhode Island
Missouri	Tennessee
Montana	Wisconsin
Nebraska	Wyoming

There were approximately 1400 transactions reported in these 14 states. Each transaction was reviewed and edited. For purposes of this regression the title related costs (paid by either buyer or seller) were added. Our current understanding is that the items included as title related costs were:

- application fee
- title examination
- title insurance
- attorney fees
- closing fee
- escrow fee
- other closing costs (except those clearly
not title related)

The explanation of subsequent procedures, however, indicates that application and attorney fees were not included; this has to be verified. Each transaction was examined to determine the mode of insurance and an appropriate binary variable was assigned if the mode was by personal search with title insurance (PT=1), by abstracting and title insurance (AT=1), or by title insurance only (T=1). An additional binary variable (SI=1) was assigned to those transactions with simultaneous insurance policies; since this information was not always available on the original form, rate manuals were used to assist in deciding whether the transaction was simultaneous.* In addition, each transaction was labeled with the percent urban, the wage rate for workers in finance and real estate, the volume of records, the population change, and the population density of the county in which the property was located, and with a variable designed to measure the adequacy of the title and limitation statutes for the state in which the property was located. The additional independent variables used were: whether the property was in an SMSA, whether it was an existing or new property, and the price of the transaction (which was equal to the mortgage amount if there was no insurance or mortgage-only insurance and to the price of the property if there was owner-only or simultaneous insurance).

Linear regressions were performed to express the total title related cost as a function of the independent variables for transactions with

* In view of the existence of title certificate rates and reissue rates, the validity of the decisions is doubtful; a sample of the forms should be checked by experts to determine the potential affect of erroneous coding.

mortgage-only or no insurance (as one group) and for transactions with owner-only or simultaneous insurance (as a second group).^{*} Similar regressions were performed using title examination and title insurance prices as the dependent variable and excluding transactions in which the sum of these two costs was zero.

In conducting this set of regressions each transaction was given equal weight. The only exception relates to transactions in Cuyahoga County, Ohio, which were eliminated from the data base because of edit problems.

B. General Results and Comments

The general results of the regression indicated that the urbanization variables were not good predictors of title related costs. This includes the percent urban, the population density, and whether or not the property was in an SMSA. This was in sharp contrast with the results from the first regression, but additional exploration of this problem by HUD was precluded due to budget limitations. However, understanding the actual effect of these variables is critical when applying the results to specific urban areas.

The fact that urbanization was not found significant in this regression is not surprising to us. Of the 1400 or so records used for regression 167 were from Denver County, Colorado, and 70 were from Ramsey County, Minnesota, both in SMSA's with reasonably good recordation systems and

* Through a programming error that was discovered in late September 1972, the data on transactions with mortgagee-only insurance were grouped with those with owner-only and simultaneous in conducting regressions.

representing 100% of the transactions in those counties. An additional 116 records were from St. Louis County, Missouri, representing 50% of the transactions in that metropolitan county in which frequent use is made of title certificates rather than title insurance. Because transactions were not weighted by their sampling fractions these three SMSA's, which have high sampling ratios and which can be expected to be relatively low in cost for structural reasons, had approximately four times the weight they ought to have had and would therefore have acted to reduce the cost of transactions in SMSA's quite markedly.

Thus the fact that urbanization was important in the first regression but not in the second may have resulted from some combination of the following factors:

- 1) Spurious correlation introduced in the first regression by the definition of the dependent variable.
- 2) Unduly high weighting in the second regression of three SMSA's in which structural considerations would indicate lower prices.
- 3) Improper specification of the regression equations by ignoring important structural variables.

Of the variables typifying the title insurance mode, two were found to be significant: personal search with title insurance, which was found to contribute roughly \$70 to the transaction, and abstract with title insurance, which was found to add about \$30 to a transaction with no insurance or mortgagee-only insurance (this mode added \$14 to transactions with owner or simultaneous insurance as far as the regression results show; due to the technical error mentioned earlier, this quantity is probably

just a reflection of the \$30 on mortgagee-only transactions). When title examination was not itemized separately the owner-only and simultaneously insured closings were about \$20 less expensive.

Existing houses had a higher cost for title examination and title insurance, to the extent of about \$10. The effect on title related costs other than examination and insurance is probably negligible.

The amount of mortgage was a good predictor of the cost of title examination and title insurance. For each \$1000 increase in price the TE and TI cost went up \$1.33 as given by the regression for transactions with no insurance or mortgage-only insurance. This is a potentially misleading result, since transactions with no insurance constitute some 24% of this class of transactions. If the prices of houses with and without insurance were about the same, then the cost of insurance as determined from this data would have been approximately \$1.75 per \$1000 of mortgage. For transactions including owner-only and simultaneous mortgage (with mortgagee-only transactions included by the technical error mentioned earlier) the TE and TI cost increased by about \$2.50 per \$1000 of price of the house; correcting for the dilution caused by the inclusion of mortgagee-only transactions the price would be approximately \$2.80 per \$1000. Simultaneous issue policies were on average \$10 more expensive than owner or mortgagee-only policies for the same price of house.

The estimates of "risk" rate are biased downward by the inclusion of transactions with no insurance and by the technical error in including transactions with mortgagee-only insurance among those with owner-only and simultaneous insurance. They may also be biased downward by the inclusion

of title guarantees and certificates which sell for a lower price, although the effect of this factor would depend on whether transactions were coded properly as to simultaneous issue; thus if transactions with title certificates for the owner- and mortgage-only insurance were coded as simultaneous issue, they would contribute to the dilution of the slope, but if they were coded as mortgagee-only, they would increase the slope for mortgagee-only and have no effect on the slope of owner-only (other than through the technical error). Similarly, since no coding was made as to whether the policy was a reissue or not, the existence of reissues would have the effect of decreasing the apparent rate.

The "goodness" of marketable title or statute of limitations legislation had a strong effect on the cost of closing regardless of whether there was insurance for any, one or both parties. The level of local wages had a significant predictive effect in the case of no insurance and only mortgagee insurance but no effect in the case of owners-only and simultaneous insurance.

It is worth noting that several independent variables which were considered important enough to include in the first regression and proved to have significant predictive power in that regression were not tried in the second regression. For example, in the first regression the percent of transactions in a state which had itemized escrow fees was believed important on econometric grounds and had significant predictive power; the second regression did not use any variable relating to the frequency of escrow fees, although at least three such variables could have been used: the percent at the state level, the percent at the county level, and a

binary variable indicating whether the individual transaction had an itemized escrow fee. The other two variables believed to indicate potential duplication of services were also excluded in the second regression. In view of the general philosophy on which HUD based its analysis this may not be too surprising. If indeed the postulate is that unnecessary services are the only source of variability, then it would be proper to ignore these variables, but if that were the hypothesis under which HUD was working, they should also have ignored these variables in their first regression. Further, it is somewhat difficult to comprehend in what sense the presence of an attorney for the seller and title insurance for the mortgagee on the same transaction represent an unnecessary duplication of services.

C. Use of the Second Regression

The equations obtained from the second regression were then used in conjunction with the value of independent variables for selected SMSA's to provide expected values of title related costs for these SMSA's. In this connection the dominant mode of title insurance in the SMSA was used rather than a weighted value, but the actual marketable title variable and wage levels were used. The price of housing was varied over a realistic range. The variable indicating whether housing was new or existing was set to 1; whether simultaneous insurance would be issued was not set systematically (for example, it was set at 1 for the District of Columbia but at 0 for the Maryland and Virginia portions of the Washington SMSA).

This data was then used in conjunction with what appeared to the workers as "reasonable" estimates of the prices that should be charged for

some elements (such as the "risk" premium) to infer what the expected charges for the other portions would be. Thus the "reasonable risk premium" was in essence deducted from the total expected cost of title examination and title insurance to obtain the supposedly "reasonable charge" for title examination. After review of the results by field personnel and some negotiation, these numbers became the "maxima" published in the *Federal Register* of July 4, 1972.

Thus for several elements the "reasonable" level of charges was assumed and for others it was inferred on the basis of these assumptions and of the previous analysis. Thus the role of the analysis becomes quite unclear; why should not all levels have been set by assumption as to what is "reasonable?"

An Analogy

In order to cast some light into the processes used by HUD and how they relate to reality, it appears worthwhile to discuss an analogy which permits us to see more clearly the impact of certain critical stages of the analysis. In order to draw an analogy we will start with the common contention that there are unnecessary services provided at unreasonable costs by the Federal Government, and hence aim at controlling the "costs."

Following the procedure devised by HUD we would start with data of the total payroll to Federal employees in each state divided by the number of employees in that state. Following the HUD procedure we would discard Washington, D.C., as completely atypical and use the data on the 50 states in a "first regression" which would relate "meaningful" econometric variables such as the percent urban, the population density, the

rate of population change, the local wage rates, etc., to the average pay per Federal employee. We would then, as did the HUD researchers, choose the 14 states that are farthest below the regression line, having average pay per worker lower than predicted by the regression line and use these in the subsequent analysis.

From each of the 14 states so selected we would obtain a random sample of Federal employees and collect data on their pay, age, time in service, number of dependents, etc. Using this data, and wage rates in the county of employment, we would run a second regression to obtain a "regression" line. Finally we would apply the coefficients to this regression line to the conditions prevailing in Washington, D.C., to obtain a number and, following the precedent set by HUD, we would interpret this number as the *maximum pay* for Federal employees in Washington, D.C., and would mandate that the President, Vice President, Congressmen, Justices of the Supreme Court, etc., all receive annual salaries no greater than this number.

It is clear from the process that the 14 states selected in the first analysis would be states in which a disproportionately large percentage of Federal employees are in the lower clerical categories. Hence it is unlikely that the average pay in these states is in excess of \$10,000 per year. If in collecting random samples we inadvertently used large sampling fractions in areas in which pay might be lower than average (e.g., rural areas where postal service employees are a larger percentage than elsewhere), and did not weight these appropriately, the second regression might indicate an annual pay of less than \$10,000 as the "reasonable and necessary" maximum for Washington, D.C.

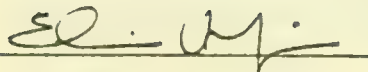
We feel that high level Federal employees might resent the loss of income implicit in setting pay by this procedure. They would probably argue that the procedure failed to take into account the level of their responsibility, the difficulty of their tasks, and the quality of their work. Yet the procedure takes these factors into account to exactly the same extent that the HUD analysis of closing costs takes the need for and the quality of title insurance into account: They are disregarded because *by assumption* all deviations of price on the high side are indicative of unnecessary and duplicate services.

Some Federal officers might object that it is unfair to develop *average pay rates* for some areas (even all areas) and then interpret these as *maximum allowable pay rates*. But this is exactly what is being done in the HUD analysis of title related costs.

This analogy shows that the procedure used by HUD in arriving at their proposed maximum charges for title related costs is inherently biased. It would lead to underestimates of the "fair" prices even *if* important variables *had not* been left out of the analysis, and even *if* the basic HUD assumption (that all charges above those predicted from the data on 14 low cost states were unreasonable or necessary) *were* true.

WORKING MEMORANDUM

For your information and review of work in progress. The findings and methods may be modified or superseded as our work proceeds.


Emilio C. Venezian

1 November 1972

Appendix C



American Land Title Association

1828 L Street, N.W., Washington, D.C. 20036 • (202) 296-3671

May 1, 1973

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ATTENTION: Housing Policy Review Team
Room 4102

Re: Review and Evaluation of
Department Programs (Docket
No. N-73-148)

Gentlemen:

This letter, in response to Secretary Lynn's invitation for public comments (published in the Federal Register of April 5, 1973 at page 8685) on what the role of Government should be in the housing area, is submitted on behalf of the American Land Title Association and its more than 2,000 members who are in the business of providing land title evidence, title insurance, and related services to the American home buying public. While the American Land Title Association is interested in and affected by many of the programs of the Department of Housing and Urban Development, our comments are directed to a particular program that the Department has under consideration--the regulation of rates and charges that may be made for certain settlement services rendered in connection with FHA-insured mortgage transactions. Proposed regulations in furtherance of this program were promulgated in Docket No. R-72-197 on July 4, 1972 (37 F.R. 13185).

This Association and many of its members have already filed extensive comments with the Department on why the proposed regulations are not authorized by Section 701 of the Emergency Home Finance Act of 1970, why implementation of the proposed regulations would work a severe hardship on the land title industry and ultimately on the home buying public, and why the procedures employed by HUD in developing the proposed regulations are fundamentally defective. In addition, comments on and criticisms of the methodology utilized by HUD in developing the proposed maximum charges have been prepared by such well-respected economic consulting firms as Arthur D. Little, Inc., and these comments and criticisms have been filed with the Department.

The purpose of this submission is not to repeat the legal or economic arguments that have been made in the hundreds of submissions filed with HUD on the proposed regulations. Rather it is to set forth some of the reasons why, as a matter of policy, Federal rate-making as embodied in the proposed regulations in Docket No. R-72-197 is not a proper or desirable response by the Federal government to the need to ensure that title to real property can be readily transferred at reasonable costs.

* * *

The review and evaluation of HUD programs presently being undertaken by the Department reflects the widespread concern that many Federal policies and programs in the housing area have not proved to be successful in dealing with our nation's housing problems. In general, these policies and programs have resulted in massive Federal government involvement in and control over efforts to deal with housing problems, with minimal reliance upon state and local governments and the private sector. While in some instances such Federal involvement and control may be highly desirable--indeed essential--it is our view that there are a significant

number of housing-related problems that can most effectively and efficiently be dealt with at the local level. Indeed, in certain areas too much control or involvement at the Federal level may not only prove to be less efficient but counter-productive.

One such area is the process by which title to real property is transferred. The real estate settlement process involves local services provided by local businessmen and lawyers who operate under laws and economic conditions that vary from state to state and, in many cases, from county to county within a state. This variety of local laws and local practices reflects the different responses of the many states and localities to the difficulties of transferring and establishing title to real property, and accounts for differences in the nature and costs of particular settlement services around the country.

The American Land Title Association recognizes that abuses or questionable practices may attend the settlement of real estate transactions in a few areas of the country. This Association and its members support efforts that would deal directly and efficiently with these problems. We are also aware that improving and updating methods of land transfer is highly desirable, and the Association is in favor of constructive activity to accomplish this objective. An example of the Association's interest in better methods of land transfer is our support of the work to develop a compatible land identifier system, which is being sponsored by real estate industry organizations under the leadership of the American Bar Foundation.

The Association has concluded, however, that HUD's proposed regulation of settlement charges in FHA assisted transactions can have little effect on abuses that may exist, and can make no positive contribution toward improving methods of land transfer around the nation. The proposed regulations would simply fix ceilings on certain FHA settlement charges. Moreover, these ceilings have been

determined through a methodology of highly doubtful validity. As the aforementioned Arthur D. Little study points out, HUD's methodology "did not identify or measure 'reasonability' or 'necessity' of services and charges; rather, the 'findings' of unreasonable and unnecessary prices entered the analysis by assumption, and the resulting maxima were deemed 'reasonable and necessary' by assumption." The proposed regulations also ignore fundamental differences in the economic, legal and operational conditions under which settlements are conducted in different parts of the country, and fail to come to grips with underlying problems that may produce higher than necessary settlement costs.

The following are some of the reasons why this Association believes that regulation of settlement charges by the Federal government is a totally inappropriate and unwise response to the problems that exist in this area.

1. HUD should not place an entire sector of the economy under Federal rate-making when excessive charges in the sector are not a widespread problem.

The Federal government simply cannot and should not attempt to solve every problem that may arise in the United States. On the contrary, good government dictates that, absent highly unusual circumstances, Federal involvement be restricted to problems that are clearly national in scope. The level of charges for settlement services do not present a problem that is national in scope. There has been no demonstration that settlement charges in general, and land title charges in particular, are excessively high throughout the nation. Quite the contrary is true. The February, 1972, Report to the Congress by the Department of Housing and Urban Development and Veterans Administration on "Mortgage Settlement Costs" stated in its "Summary of Findings" that

"Costs appear to be high in some areas, but unreasonable costs probably occur in fewer areas than may be popularly assumed."

This conclusion is supported by the findings of others who have studied the real estate settlement process. For example, in 1970 the General Assembly of Virginia (a state where title charges are alleged to be unreasonably high) created the Virginia Housing Study Commission to survey various housing problems in the state. The Commission's Sub-committee on Problems in the Transfer of Real Property, whose membership included state officials, law professors, industry representatives and consumer spokesmen, submitted its report in November, 1972, which included the following unanimous conclusion with respect to title insurance charges:

"The Sub-Committee is not persuaded that rates are excessive or that there is sufficient evidence to justify HUD's possible regulation dictating lower rates in Northern Virginia." (p. 14)

While certain problems or abuses may exist in a few particular areas of the country, resulting in unnecessarily high charges for settlement services, this fact is not by itself a sufficient basis for a Federal program that would impose rate regulation on tens of thousands of small businesses and individuals who provide settlement services. If rate regulation were the Federal response to every industry in which some problems or abuses resulted in higher-than-necessary charges in particular localities, there would be few areas of our economy where prices would not be dictated by the Federal government. In addition, it should be noted that a number of state insurance commissioners, in commenting on last year's proposed regulations, have pointed out that Federal regulation of title insurance is in conflict with existing state authority.

2. Federal rate regulation is an inappropriate governmental response to high charges where they do exist, for rate regulation deals only with the symptoms and not with the basic causes of unnecessarily high charges.

While the imposition of a limit on charges for the rendering of a particular service may result in "lower" charges, such an approach does not deal with the fundamental reasons why such charges may be unnecessarily high. The Federal Home Loan Bank Board, in a letter to Chairman Wright Patman dated June 14, 1972, commenting on the Housing and Urban Development Act of 1972 that was then before the House Banking and Currency Committee, has observed that in dealing with problems in the settlement process:

"(R)ate regulation...is merely symptomatic treatment.
It is like the administration of a pain-killer as a
remedy for appendicitis."

If charges for certain settlement services are unreasonably high in some localities as a result of particular problems or abuses, these problems or abuses should be dealt with directly. For example, if payments of "kickbacks" result in unnecessarily high charges to home buyers, then kickbacks should be prohibited. This Association has already placed itself on record in support of regulation or legislation that would outlaw such objectionable practices.

To ignore underlying practices or problems that may be impairing the proper functioning of the competitive process in favor of fixing limits on charges is neither good government nor consistent with the traditional role of government in dealing with such practices or problems. If the price of automobiles or toasters or television sets or any other product or service is too high because of anti-competitive or abusive practices, the government's response properly has been to attack the objectionable practice, not to ignore the cause of the difficulty and instead fix limits on the price at which the item or service can be sold. Sound policy dictates a similar approach where settlement charges are higher than they need be because of abusive practices.

3. Federal rate regulation of charges for settlement services, if such regulation is to be fair and consonant with due process, would require an enormous Federal bureaucracy. It is not a wise utilization of the Federal government's energies or resources to erect such a bureaucracy.

The imposition of Federal rate regulation by HUD poses a difficult dilemma for the Department: either it must establish a new bureaucratic machinery of potentially immense proportions in order to ensure that rates are established in accordance with the reasonable and fair procedures required in other instances of Federal rate making, or it must, in the name of expediency, promulgate rates under "streamlined" procedures that are not adequate to protect those whose rates or charges are regulated from the establishment of arbitrary or confiscatory limits. Neither alternative is acceptable.

The maximum charges provided for in the July 4 proposed regulations were developed by means of a methodology that offered the attraction of being easy to administer. That methodology relieved HUD from the burden of examining or analyzing services provided in any particular state or locality, the costs involved in providing such services, differences in the quality of services performed, or whether reasonable profits were being earned by the attorneys or businessmen involved. There is, however, no easy road to the regulation of the charges made by thousands of individuals for services rendered in exceedingly diverse circumstances.

If HUD intends to establish the usual safeguards to ensure that rates will not be arbitrary or unfair, then the Department will have to develop the necessary staff, examiners, review panels, et cetera, that characterize the rate regulatory process elsewhere. The establishment of a new bureaucratic machinery in HUD comparable to that maintained by the Interstate Commerce Commission, the Federal Power Commission, and other agencies that have rate regulatory authority, all for

the purpose of regulating rates for what are essentially local services, seems clearly contrary to the President's announced policy of reducing the size of the Federal bureaucracy wherever feasible.

Moreover, at least in the case of the title insurance industry, the development of such a bureaucracy would simply duplicate existing and proposed state regulatory schemes. To the extent that there is duplicatory regulation, additional administrative burdens are imposed on the industry that can only increase title insurance costs and ultimately the charges that must be made to home buyers. Such a consequence can hardly be in the public interest.

4. The proposed HUD regulations establishing maximum charges for certain land title related services would not significantly reduce settlement costs to the home buyer.

Only a small portion of the total charges incurred by home buyers in real estate settlements would be covered by the July 4 proposed regulations. While these regulations will embrace such settlement charges as attorney's fees and title insurance charges, the fact is that these charges account for only a small part of total settlement charges. As the February, 1972, joint HUD-VA Report on "Mortgage Settlement Costs" discloses, the major portion of total settlement charges consists of such items as transfer taxes, recording fees, prepaid taxes and insurance, loan origination fees, loan discounts or points and sales commissions to real estate brokers.

It makes little sense for the Federal government to undertake the fixing of rates for services that have traditionally been of state or local concern, with all the attendant costs and bureaucratic problems such rate-making would involve, if the net result is that only a small portion of total settlement charges will be affected. An indication of just how small this portion is can be obtained from the joint HUD-VA Report. Tables IIIa through XIVa on pages 95 through 118 of the HUD-VA Report set forth the average charges made for settlement services in over 3,900 transactions

examined by HUD in 12 representative areas around the country. An analysis of these figures indicates that the average total cost of settlement in these 3,900 transactions was \$1,976. An examination of the charges listed for the particular settlement services that would be covered by the proposed HUD regulations (title examination and insurance, survey, attorney's fees, preparation of documents, closing fees, and escrow fees) indicates that these charges on average amounted to only \$282. Thus, on the average, only slightly over 14% of the total settlement charges would be subject to the HUD regulations.

If HUD arbitrarily established ceilings on charges for those services subject to the proposed regulations at levels which are 25% below existing levels (even though it is highly doubtful that such a large reduction in existing charges can be justified), there would be a reduction of some \$70 in the average transaction. This \$70 decrease, lowering overall settlement costs from \$1,976 to \$1,906, represents a reduction of total settlement charges by only 3 1/2%. While this 3 1/2% saving would, at best, provide only minimum benefits to home buyers, the effect on those regulated of having to reduce their charges as much as 25% is likely to be catastrophic. Many legitimate businessmen and lawyers who are earning only modest profits from the prevailing charges will be forced out of business and into other lines of endeavor. In the long run, this can only serve to reduce, rather than enhance, competition in this area. Moreover, it is difficult to justify the creation of a costly and cumbersome bureaucratic rate-making apparatus for so little potential benefit.

If the objective of reducing the costs of settlement is to minimize, so far as possible, initial hurdles to home ownership, it is apparent that rate regulation as embodied in the proposed regulations is an extremely blunt instrument with which to pursue this end. The comparatively modest reduction in charges to home buyers,

measured against the public cost involved, makes the wisdom of such an approach doubly suspect.

5. Competitive and regulatory safeguards presently exist or can be developed to ensure that reasonable charges are made for settlement services without the need for Federal rate regulation.

As a matter of policy, rate regulation should be an absolute last resort in attempting to eliminate unreasonably high charges for settlement services. As the Federal Home Loan Bank Board pointed out in its letter to Chairman Patman opposing Federal rate regulation of closing and settlement charges:

"(R)ate regulation is contrary to this country's traditional philosophy regarding the role of the marketplace. Our economic theory, our law, and our experience all teaches us that a regime of competitive pricing, rather than a market in which prices are prescribed or manipulated, is most likely to produce a state of maximum allocative efficiency, that is, a state in which limited resources are used in such a way as to produce the greatest output of the goods and services most desired by consumers."

Virtually everyone who has examined the real estate settlement process in the United States agrees that there is strong competition among those who provide title insurance and related services. It may be that in some areas price competition with respect to other settlement services is not as strong as it might be, but competition is rapidly developing even in these areas. For example, the Department of Justice has recently undertaken several actions challenging the use of minimum fee schedules by bar associations and real estate brokers. A recent decision of the United States District Court for the Eastern District of Virginia, Goldfarb v. Virginia State Bar, held that minimum fee schedules are a form of price fixing and, therefore, inconsistent with the antitrust laws. The Antitrust Division has

issued a general warning to the bar that lawyers who use minimum fee schedules risk antitrust liability. Many bar associations have voluntarily decided to eliminate the use of such fee schedules. These actions should have the effect of ensuring that competitive charges are made for real estate settlement services provided by attorneys. Indeed, there are indications that the Goldfarb decision and other competitive pressures have already reduced settlement charges in Northern Virginia.

The Department of Justice has been vigorous in its pursuit of anticompetitive practices by others whose charges are part of the cost of buying a home. As recently as April 16 of this year, the Department filed a consent judgment in the U. S. District Court for the Western District of Pennsylvania prohibiting the Greater Pittsburgh Board of Realtors and four multiple listing service organizations from fixing commission rates in connection with the sale of housing.

Apart from those competitive and regulatory safeguards that already exist and which can be used presently to attack unnecessarily high settlement costs, there is every prospect that additional safeguards will be available shortly. The American Land Title Association has played a strong and active role in support of strengthened state regulation of title insurance. On March 16, 1973, ALTA members approved an extensively revised and updated Model Title Insurance Code for use by states that do not presently have strong regulatory statutes. (A copy of the Model Code is enclosed.) Included in the Model Code are provisions prohibiting kickbacks and rebates, and provisions requiring close supervision by insurance commissioners of title insurance rates and operations. ALTA members have agreed to encourage use of the Model Code wherever possible as the best means of achieving strong state regulation of title insurance. Moreover, as the Department is aware, there is every prospect that the 93rd Congress will enact Federal legislation containing strong anti-kickback and

disclosure provisions, along the lines of those contained in Chapter IX of H. R. 16704 as approved last September by the House Committee on Banking and Currency, that will deal directly with the underlying causes of unnecessarily high settlement costs.

In view of these developments that promise effective relief from the abusive and anti-competitive practices that contribute to unnecessarily high settlement costs in certain areas, it would appear both unnecessary and unwise to implement a costly and cumbersome scheme of Federal rate regulation.

* * *

In sum, the case against regulation by the Federal government of settlement charges is clear. The problem is not widespread. Rate regulation treats symptoms only, and leaves uncorrected the underlying causes of unnecessarily high charges. To be fair, rate regulation requires the establishment of a costly and cumbersome bureaucracy. Potential benefits to home buyers are modest, inasmuch as even deep slashes in those charges subject to regulation would produce only slight reductions in the overall level of settlement costs. There are other more effective means to achieve the same results.

To say that rate regulation of settlement charges by the Federal government is ill-conceived and unsound public policy is not to say, however, that the Federal government may not have a proper and important role in this area. This Association believes that Federal activity is most appropriately directed towards achieving those reforms that are not likely to be achieved by private industry or by local and state governments. There are at least three critical reforms that could fall into this category: (1) encouraging and assisting local governments in improving and modernizing the methods they utilize for land recordation; (2) eliminating various undesirable practices, such as the payment of kickbacks

and unearned fees, that increase settlement costs without providing any benefits to the home buyer; and (3) providing greater and more timely disclosure to home buyers regarding the nature and costs of settlement services, so that they can knowledgeably shop around for these services and thereby enhance competition. Appropriate Federal assistance in meeting these objectives will result in far greater and more permanent benefits to the American home buying public than any system of Federal rate regulation can provide.

While Federal efforts directed at the latter two objectives will be of significant benefit to home buyers, in the long run modernization of land recordation systems and outdated laws affecting the transfer of real property offers the prospect for realizing substantial savings in the cost of transferring title to real estate. As the study performed for HUD by American University on the real estate settlement process concluded:

"At the root of the closing cost problem are poorly organized and indexed public records."
(p. iii, Supplement to the February 1972 HUD-VA Report to the Congress.)

This Association believes that the Department is in a key position to help achieve these objectives. To this end, the Department should work closely with the Congress, with other government agencies such as the Federal Home Loan Bank Board, with state governments, and with representatives of the bar and the title industry, to help perfect or develop additional or alternative reform proposals along the lines of those embodied in Chapter IX of H. R. 16704--the settlement and closing cost chapter of last year's housing bill, as approved by the House Committee on Banking and Currency.

One final word needs to be said about the proper role of the Department of Housing and Urban Development in view of the existence of Section 701 of the

Emergency Home Finance Act of 1970. As this Association has pointed out in its earlier filings in Docket No. R-72-197, that statutory provision, as is made clear by its legislative history, in no way authorizes or directs the Department to implement a system of rate regulation such as that embodied in the July 4 proposed regulations. Rather, Section 701 authorizes the establishment of "standards" for settlement charges in connection with FHA-assisted transactions. Whatever the word "standards" may mean, it should not be construed to authorize the imposition of maximum limits on closing and settlement charges in view of the strong public policy considerations against Federal rate regulation.

In view of the ambiguous direction provided by the Congress to HUD in the 1970 Act, this Association believes that the strong expression of Congressional sentiment against Federal rate regulation embodied in last year's 28-8 vote of the House Committee on Banking and Currency and the prospect of legislation in the 93rd Congress in favor of direct action against abusive practices suggest that the proper course for HUD is to refrain from proceeding with a scheme of rate regulation until the Congress has clarified what the Federal role in this area should be.

The Department and the members of this Association share a common objective of seeing that reasonable and effective ground rules and guidelines are established under which private industry can continue to perform settlement services free of undesirable or inefficient practices that unnecessarily increase settlement costs. The American Land Title Association pledges its full cooperation to the Department in pursuing this common objective.

Respectfully submitted,

AMERICAN LAND TITLE ASSOCIATION

By: 

Jerry O. Hickman, President

Appendix D



PRESTON MARTIN
CHAIRMAN

FEDERAL HOME LOAN BANK BOARD

WASHINGTON, D. C. 20552

100 INDIANA AVENUE N. W.

June 14, 1972

FEDERAL HOME LOAN BANK
SYSTEM

FEDERAL HOME LOAN
MORTGAGE CORPORATION

FEDERAL SAVINGS & LOAN
INSURANCE CORPORATION

Honorable Wright Patman
Chairman
Committee on Banking and Currency
Room 2129 Rayburn House Office Building
United States House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

The purpose of this letter is to state the position of the Board on the Subcommittee version of the "Housing and Urban Development Act of 1972." I shall deal almost exclusively to Title IX of the bill, relating to closing costs and settlement procedures, although I shall make some comments and recommendations about certain sections not contained in Title IX. The Office of Management and Budget has advised that, from the standpoint of the program of the President, there is no objection to the contents of this letter..

I - INTRODUCTION

At the outset let me state the Board's general theoretical position on Title IX. Then I shall take up the sections of the Title in the order that seems most convenient.

It appears that the entire complex of business relationships and procedures generally prevailing today to facilitate real estate settlements is marked by inefficiency, confusion, and a variety of unethical even illegal practices. These characteristics result in some locales in transfer costs high enough to discourage purchases and thereby impede the achievement of our national housing goals. The situation to which Title IX addresses itself is therefore one of national concern, and it is critical that measures be taken which will encourage purchases of housing by the greatest feasible numbers of our households. I respectfully submit that this is the primary objective sought.

II - DIRECT REGULATION OF CLOSING COSTS

It seems to the Board that there are two basic approaches to this general problem, although a special case is presented by FHA and VA mortgage loans and the Board's comments are not directed to the market in such loans. The first

approach is to regulate closing costs directly, that is, to provide for legal maxima on the charges which may be imposed for services incident to real estate settlements. This approach is akin to the rate regulation process employed by utility and insurance commissions. It is the approach found in section 902 of the Subcommittee bill and section 712 of the Senate passed bill (S. 3248). Such maxima should be set so as to retain adequate human and other resources in the "closing process."

The second approach is to regulate the underlying business relationships and procedures of which the costs are a function. This is the approach employed in the remainder of the Subcommittee bill, in Chairman Patman's bill (H. R. 13337), and in one provision in the Senate passed bill (the new section 701(e) of The Emergency Home Finance Act which would be added by section 712 of the bill).

It is the position of the Board that the second approach is the only pragmatic one to take at this time, in view of the objective stated above and that the first approach should be reluctantly taken only when and if the second should prove ineffective. The Board therefore opposes section 902 of the Subcommittee bill and the analogous provisions of the Senate bill. The Board's position is based on four general considerations.

First, rate regulation in this case is merely symptomatic treatment. It is like the administration of a pain-killer as a remedy for appendicitis.

Second, rate regulation in this case is likely to create a bureaucratic monstrosity. Given the wide variety of local closing practices and the size and complexity of real estate markets and submarkets, no other result is possible if, as section 902 commands, maximum rates are to be set on a regional basis using the full panoply of the Administrative Procedure Act.

Third, rate regulation is contrary to this country's traditional philosophy regarding the role of the market place. Our economic theory, our law, and our experience all teach us that a regime of competitive pricing, rather than a market in which prices are prescribed or manipulated, is most likely to produce a state of maximum allocative efficiency, that is, a state in which limited resources are used in such a way as to produce the greatest output of the goods and services most desired by consumers.

Fourth, generally speaking, rate regulation not only doesn't work very well, but itself creates serious distortions and instabilities. The Board has had direct experience of this fact in the case of the setting of maximum rates of interest which may be paid on accounts in financial institutions. Although they have clearly been necessary to keep funds in housing finance, the Regulation Q

ceilings are a poor substitute for redressing the underlying competitive inequalities among financial institutions, both on the asset and liability sides. In the absence of basic remedies, the ceilings have produced endless efforts to evade them, including resort to eurodollar markets overseas.

To summarize to this point, the Board believes that the costs of rate-fixing outweigh the benefits. Then how can market forces be strengthened to do a better job?

III - INCREASED AVAILABILITY OF INFORMATION

The Board is not advocating, laissez faire, laissez passer. It is almost universally agreed that the real estate settlement market is not a fair and free market. We must take action to reduce, and eliminate if possible, the imperfections in this market.

It is a fundamental economic concept that a competitive market cannot exist when the buyer is uninformed. He must have ready access to reliable information on alternative products and costs. For that reason, the Board supports the concept behind section 904 of the Subcommittee bill relating to special information booklets which describe the nature and cost of real estate settlements.

On the same basis, the Board supports section 903 of the Subcommittee bill relating to the development of a uniform settlement statement. Such a statement would better enable the buyer to make cost comparisons for himself. This proposal is an extension of the standard mortgage instrument developed by the Board and FNMA. A buyer can much more easily make rational economic decisions if he has before him a standardized product and standardized price information. In principle, there is little difference between these proposals and the requirements in existing consumer legislation for unit pricing and a limited number of standard industry-wide product sizes.

The Board has a mixed reaction to section 905 of the Subcommittee bill dealing with advance disclosure of settlement costs. On the one hand, it is clear that the competitive nature of the market is enhanced when the buyer not only has generalized or average price information but specific price information on the particular transaction contemplated. Certainly, none of us would buy an item of furniture, for example, knowing only the average cost of such an item. On the other hand, the costs of providing such detailed disclosures may outweigh the possible benefits. The costs of informing would be passed on in the loans actually made. For the moment, the Board would prefer to give this section further study and state a formal position to the Committee in a subsequent letter.

With respect to section 909 relating to disclosure of the previous selling price of existing real property, the Board understands that the provision is designed to prevent the inflation of property prices by one or more fictitious

"straw party" transactions prior to an actual sale. The Board also understands that this problem exists almost exclusively in connection with the transactions of speculators in urban areas, particularly transactions involving FHA assistance. We note, however, that section 909 is drafted in such a way that it would be applicable to any loan, anywhere in the country, meeting the very broad definition of "federally-related mortgage loan." The Board fully supports the elimination of the abuse at which section 909 is aimed and agrees that disclosure of previous selling prices is an appropriate remedy. The Board would prefer, however, to see section 909 more narrowly drafted and we would be glad to assist the Committee in that regard.

The Board fully supports section 910 of the Subcommittee bill which prohibits the charging of a fee for the preparation of Truth-in-lending Statements. The argument is sometimes made in favor of such fees that it is the borrower who ultimately pays for the preparation of the statements and that it is therefore a matter of indifference whether the borrower pays in the form of a direct fee or an increase in the lending rate. It is true that it is the borrower who ultimately pays, but it is not true that the method of payment is a matter of indifference. Prohibiting a direct charge forces the cost of preparation to become an internal business expense to the institution, and the institution, due to its profit motive, will tend to minimize the cost. More generally stated, it is the view of the Board that full competition cannot be restored to the real estate settlement market unless the transactional costs for the delivery of price information are minimized.

IV - KICKBACKS

The real estate settlement market is characterized by non-price competition. One of the principal forms of non-price competition is advertising which has little overt use in the real estate settlement market because of the anti-solicitation canons of several of the professions engaged in that market. Recourse is therefore especially made to another classic form of non-price competition, that is, the use of a system of discounts, rebates, commissions, concessions, and kickbacks. Such a system is wide-spread and highly developed in the real estate settlement market and is a major indication of the imperfect nature of that market.

The Subcommittee bill addresses itself to this problem in sections 906 and 907. Section 906 would make it a criminal offense to give or receive a kickback in connection with a real estate settlement involving a federally related mortgage loan. Section 907(a) would prohibit an attorney in connection with such a settlement from receiving a commission from a title company and section 907(b) would provide a civil remedy in the amount of 3 times the commission. Many of the transactions covered by these two sections may well violate existing Federal criminal law dealing with commercial bribery. These transactions also violate anti-kickback statutes and insurance codes in several states. In addition, they are violative of the ethical canons of the legal and real estate professions.

The Board has several suggestions concerning these two sections. It is not clear to us why the bill makes separate provision for commissions to attorneys in section 907(a) since the commission is essentially a kickback covered by section 906. Indeed, the separate provision and the lesser civil remedy raise the implication that the commission is different from a kickback and is not as improper a practice. The Board would prefer to merge sections 906 and 907 so that all kickbacks are prohibited and subject to both a civil and criminal remedy.

The Board does not read section 906 to cover the situation in which a financial institution collects various fees incident to settlement and disburses them to the proper parties. Savings and loan associations commonly act in this "pass-through" role in order to simplify the settlement process.

As a technical matter we would recommend the deletion of the phrase "personally and" from the definition of "commission" in section 901(4)(A). The phrase does not seem necessary and raises problems when work is performed by a law firm or professional corporation and billed in the name of the firm or corporation.

V - ESCROW ACCOUNTS

. Another characteristic of imperfect markets is that various participants use their market power to maintain prices in excess of levels which would obtain in a competitive market. A requirement to maintain excess deposits in escrow accounts is essentially the imposition of an artificial price in excess of the equilibrium price. The Subcommittee bill addresses itself to this imperfection in section 903 by prohibiting financial institutions from requiring deposits in escrow accounts beyond the minimum necessary to meet the payment schedule of the particular jurisdiction. The Board supports this section.

Section 914 deals with the payment of interest on escrow accounts. In a purely competitive market the forces of competition would tend to force financial institutions to pay some interest on escrow accounts to the extent that the return on the escrow balances exceeded the cost of servicing the escrow accounts. It is even possible that in such a market some institutions would pay interest in excess of the cost of servicing as "loss leaders."

Unfortunately reliable data is almost non-existent on the cost of servicing escrow accounts and the value to the institution of a lower foreclosure rate where funds are escrowed. The Board is therefore opposed to bills such as H. R. 13561, 13787, and 13979 which would direct the payment of some level of interest on escrow accounts. It is not certain how the payments would be passed on in the form of higher interest rates. The Board supports section 914 which

would direct the Board of Governors of the Federal Reserve System to conduct a study in this area. In the absence of reliable data, rational action in this area is impossible.

VI - STRUCTURAL INEFFICIENCIES AND DISTORTIONS

Another characteristic of imperfect markets, especially if they have persisted for some time, is the development of a number of structural inefficiencies and distortions. There seems to be general agreement that the system of land recordation which exists in many parts of the country is such an inefficiency. The system is a green eye shade and quill pen system in an age of computer technology. Modernization of the system of land recordation is a major recommendation of the HUD-VA study concluded under section 701 of the Emergency Home Finance Act. It may be that potentially the unit cost of maintaining and processing land titles can be brought down to near the level of the unit cost for automobile titles.

Critics of this recommendation argue that enormous costs would be involved because of the expense of conversion and the loss of value in the private recordation files of title companies. This may be true, but the argument means only that the break-even point may be quite distant: the point at which the savings in social cost of the new system first exceeds the social losses from the old system.

It is in any event true that reliable data are absent as to the least expensive method of effectively modernizing the system. The Board therefore supports section 911 which authorizes the Secretary to place a modern system in operation in representative subdivisions on a demonstration basis. The experience and information gained should be invaluable in achieving eventual elimination of this serious and costly market inefficiency.

Division of markets and barriers to entry are other structural characteristics of imperfect markets. Section 912(a) is aimed at these characteristics. In many jurisdictions bar associations have succeeded in preventing title companies from performing many of the functions embraced in the definition of "title services" found in section 901(3) of the bill. Commonly, title companies are prevented from holding settlements, preparing documents and instruments, and furnishing opinions on the status of titles, but are not prevented from examining titles, furnishing abstracts of title, and furnishing title insurance. The claim is that the former functions constitute the unauthorized practice of law and this claim is enforced by restrictive legislation or court actions or the threat of either or both of these.

Economic theory predicts a number of consequences from this type of market structure. First, the prices paid for the services will be higher than in a competitive market. Second, because of the higher prices, fewer settlement services will be produced and consumed in the aggregate (purchases by the relatively wealthy and poor would probably not be affected but those of the middle income group will decrease). Third, because excess profits are derived by lawyers, a disproportionate share of society's human resources will be drawn to this segment of the bar. Fourth, a disproportionate share of other scarce resources will be acquired by the bar's increased purchasing power. Fifth, to the extent that members of the bar are performing functions which can be performed equally well by the less able and less trained, a social loss will be incurred through the under-productivity of members of the bar.

These consequences are grave indeed and the burden of justifying them is high. This burden can be met only if it can be clearly shown that a greater injury to the public would result through the mistakes and omissions of non-lawyers and those of lawyers who are not independently employed. There is serious doubt whether this burden can be met. First, it is common experience that the searching of titles, the preparation of instruments, and the handling of closings are routine clerical tasks in the vast majority of cases. Second, in those cases where legal judgment and skill are needed, there is no reason to believe that it can be adequately supplied only by independent practitioners. Third, in such cases, the purchaser is most likely to hire personal counsel. Finally, errors and omissions are generally insured against.

On the basis of the foregoing, the Board believes that section 912(a) is justified and the Board supports it.

Another characteristic of imperfect markets is the existence of tie-ins, that is, a situation in which the ability to purchase or sell an item, called the tied product, is conditioned on willingness to purchase another item, called the tying product. Section 912(b) is aimed at the situation in which a seller of land is willing to sell only if the purchaser buys title insurance from a company controlled by the seller. This prohibition would apply to a bank or savings and loan association which refuses to sell any of its real estate owned (REO) unless the purchaser obtains title insurance from a title company owned or controlled by the bank, the association or its management.

Such a tie-in is a clear per se violation of existing anti-trust law. If, however, the committee believes it desirable to express more particularly the very general language of the Sherman and Clayton Acts, the Board can see no reason for not doing so.

VII - OTHER MATTERS PERTAINING TO TITLE IX

Section 913 would amend the Federal Deposit Insurance Act and Title IV of the National Housing Act to prohibit any financial institution covered by those statutes from making "any federally-related mortgage loan to any agent, trustee, nominee, or other person acting in a fiduciary capacity without the prior condition that the identity of the person receiving the beneficial interest of such loan shall at all times be revealed to the institution." Section 913 also requires that the institution report the identity of the person and the nature and amount of the loan to the Board and that the Board make the information available to the public.

This section does not appear to have any connection with efforts to improve the functioning of the real estate settlement market. It deals rather with unsafe and unsound practices in lending. The FSLIC and FDIC now have the power to impose by regulation the reporting requirement contained in section 913. The Board has no objection to such a requirement being directed in a statute. The Board does object to mandatory public disclosure of these reports. It is true that mandatory public disclosure may enlist the aid of members of the public as "private attorneys-general", but the Board believes that the value of such aid is more than offset by the undesirable consequences of such an invasion of privacy. As a technical matter "the Corporation" should be substituted for "the Federal Home Loan Bank Board" in section 913(b).

At this point I should like to recur to the definition of "federally-related" mortgage loan in section 901(1). The Board is concerned that this definition may be so broad that it includes loans which cannot be legitimately characterized as "federally-related." Our concern is directed particularly at those loans covered by section 901(1)(B)(iii), that is, loans which are eligible for purchase from FNMA, GNMA or FHLMC or which are eligible for purchase by FHLMC. The Board believes that mere eligibility for purchase may be an insufficient Federal nexus on which to base substantive regulation, as opposed to regulations which simply state the conditions under which the Corporation will deal. The Federal nexus set forth in section 901(1)(B)(i) is much more solid and, since (B)(i) and (B)(iii) overlap in every important respect, it seems desirable to eliminate (B)(iii) and the Board so recommends.

Let me conclude the Board's views on Title IX with two technical remarks. The Board's recommendation that section 902 be deleted does not extend to section 902(e) which repeals the section of the Emergency Home Finance Act which authorized the HUD-VA study of closing costs. Further, if section 902 is deleted, it would be necessary to delete subsections (b)(2) and (c) of section 903.

VIII - PROVISIONS OUTSIDE OF TITLE IX

Let me now turn briefly to certain provisions in Titles other than Title IX.

The Board endorses Title I's consolidation of numerous housing programs into a Revised National Act. With respect to other sections in Title I, the Board recognizes the need for governmental assistance to encourage expanding housing development concepts. These concepts are developed in the bill's proposal for flexibility in the establishment of prototype costs to determine limits on mortgage insurance, the special insurance risk classification, among other provisions.

For the reasons stated by Secretary Romney in his testimony, the Board strongly objects to Section 115 of Title I which provides for the financing of middle-income family home-improvement loans by an expansion of Section 243 of the National Housing Act, to enable the Secretary of HUD to make interest subsidy payments to the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

I would now like to turn to the provisions of the Committee bill which relate to the secondary mortgage market activities of FNMA. As you know, the members of the Federal Home Loan Bank Board also serve as the Board of Directors of the Federal Home Loan Mortgage Corporation which performs similar functions as FNMA. When FHLMC was created, every effort was made to give these two mortgage corporations equal authority.

Most of the provisions of section 1005 of the bill (and section 720 of the Senate bill) do not affect FNMA's authority but merely eliminate cumbersome references to other Acts and obsolete sections. Subsections (c) and (d), however, contain substantive changes. Section 1005(c) deletes "private" from clause (c) of the second sentence of section 302 (b)(2) of the National Housing Act. This amendment would permit FNMA to deal in conventional mortgages which exceed 75% of the value of the security if the excess over 75% is insured by an insurer found to be qualified by FNMA whether the insurer were private or public. There is no reason for the present limitation to private insurance. This same change should also be made in Section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act to preserve parity between the two secondary market corporations.

Section 1005(d) amends another part of section 302(b)(2) to set the maximum limits which may be set by FNMA with respect to the principal obligation of conventional mortgages purchased by it. The last sentence of section 305(a)(2) of the FHLMC Act is identical to this last sentence of section 302(b)(2). Thus, any amendment to the latter section should also be made to the former.

The amendment contained in the Committee bill would set the maximum limit at \$40,000 for a mortgage with respect to a single family dwelling. The maximum limit on multi-family dwellings would be determined by reference to section 5(c) of the Home Owners' Loan Act, a statute administered by this Board. However, section 5(c) sets the maximum single family loan limit (for Federal savings and loan associations) at \$45,000. Since most of FHLMC's customers are savings and loan associations, the maximum single family mortgage which the two mortgage corporations may purchase should be set at least at \$45,000. However, even that figure cuts off a significant part of the mortgage market, and the Board recommends a maximum limit of \$55,000 as more practical. We would do this by an appropriate amendment to section 5(c) of the Home Owners' Loan Act and amendments to the Corporation's statutes containing references to that section.

The Board therefore recommends that section 1005(d) of the Committee bill (and section 720(d) of the Senate-passed bill) be re-cast as follows:

"(d)(1) The last sentence of section 302(b)(2) of such Act and the last sentence of section 305(b) of the Federal Home Loan Mortgage Corporation Act are amended by striking out everything which follows "which" and inserting in lieu thereof: 'shall not exceed the limits established under the first proviso to the first sentence of section 5(c) of the Home Owners' Loan Act of 1933'.

"(2) The first proviso to the first sentence of said section 5(c) is amended by substituting '\$55,000' for '\$45,000'."

In line with the idea of maintaining equality between the two mortgage corporations, I would like to take this opportunity to point out a provision of the Housing Institutions Modernization Act (H.R. 7740) which we submitted to you last year. Section 305 of that bill would add a provision to the FHLMC Act equivalent to a provision which already applies to FNMA (section 311 of the National Housing Act). The proposed provision would provide that, subject to applicable regulatory authority, obligations and securities of FHLMC, except its stock, shall be lawful investments and security for fiduciary, trust, and public or other funds. There are many precedents for this type of legislation, including section 15 of the Federal Home Loan Bank Act which provides that obligations of the Federal Home Loan Banks (which are not guaranteed by the United States) are lawful investments and security for public, fiduciary, trust and corporate funds. Another precedent is section 409 of

the National Housing Act which similarly provides that savings and loan share accounts insured by the Federal Savings and Loan Insurance Corporation are also lawful investments and security for such funds. I recommend that you consider adding this provision as a subsection (k) of section 1005.

Sincerely,

Preston Martin
Chairman

REVISED MODEL TITLE INSURANCE CODE

(1973)



American Land Title Association

1828 L Street, N. W.

Washington, D.C. 20036

STATEMENT OF PURPOSE AND USE

The within Revised Model Code is the product of the land title industry's best thinking and conclusions after nine years of experience in the use and attempted use of the provisions of a Model Title Insurance Code adopted by ALTA in 1964.

In the revision consideration has been given to the attitudes of the regulators, the changes that have occurred in the general insurance laws of the several states, the changing character of the business of title insurance, the expressed concern of the federal government, and the current attitudes of consumers.

Greater utilization is made of references to the general insurance laws, with specificity used only when it is deemed necessary to provide a stronger and more effective scheme of regulation by recognizing the nature of the business of title insurance and its differences from other lines of insurance.

It is urged that those proposing to use the within code for the purpose of enacting legislation look at it as a compendium of the areas of regulation deemed necessary for the business of title insurance and suggested provisions therefor, many of which are considered to be mini-

mal, and others made intentionally broad to cover the different methods of doing title insurance business throughout the United States.

No person or group of persons should attempt to utilize the within code as legislation in a particular jurisdiction until there has been made a thorough and exhaustive study of the insurance laws of, and the manner in which the business of title insurance is conducted in, that jurisdiction.

It is urged that earnest consideration be given to the value and advantages of nationwide uniformity in certain areas of regulation, viz:

- (a) provisions for reserves;
- (b) limits of single risk limitation;
- (c) provisions for reinsurance of single risks;
- (d) provisions for admittance of foreign and alien insurers; and
- (e) provisions relating to rebates and controlled business.

Adherence to the provisions of the within code relating to those areas is strongly recommended.

Other provisions of the within code may be modified on a state-by-state basis in recognition of statutes or practices of

long standing without adversely affecting the scheme of regulation. To illustrate:

Section 101(e): Other components of the total charge may be included in the definition of "rate" where they are desired or customary, or some included components may be deleted where they are inapplicable.

Sections 131 through 134: Regulation of agents is a necessary part of any title insurance code. While the provisions of the within code are considered broad enough for use in any state, local statutes, customs, and/or practices of long standing may dictate an amplification of such provisions.

Sections 142 through 154: Regulation of rates is a vital and necessary part of any title insurance code. The provisions of the within code set forth the minimum essential for strong and effective regulation. Adoption of a different method of rate regulation equal to or greater in strength and effectiveness would not violate the purpose of the within code.

The within code was adopted by the American Land Title Association at its Mid-Winter Conference on March 16, 1973 by the passage of the following resolution:

RESOLUTION

Resolved that this meeting vote approval of the Model Title Insurance Code, Revised, as submitted to the members on or about January 31, 1973, and as amended in this meeting, that upon such approval the National Office codify the material in one document which shall include a statement of purpose and use containing an explanation to the effect that, by reason of local law, practice or custom, certain specified sections of the code may require modification or amendment; and as so codified shall be distributed to the membership of this Association and to the appropriate members and committees of the National Association of Insurance Commissioners; that the Officers of the American Land Title Association be empowered to respond to requests for printed copies of the code, and upon its response to each such request, shall notify the affiliated state title association, if any shall exist, in the state from which the request was made, and should there be no affiliated state title association in such state, shall then notify all of the title insurance company members of the American Land Title Association domiciled in said state.

REVISED MODEL TITLE INSURANCE CODE

(1973)

A. PRELIMINARY PROVISIONS

Section 101 *Certain Words Defined:*

(a) "Title Insurance" means insuring, guaranteeing or indemnifying owners of real or personal property or the holders of liens or encumbrances thereon or others interested therein against loss or damage suffered by reason of:

(1) liens, encumbrances upon, defects in or the unmarketability of the title to said property;

(2) invalidity or unenforceability of any liens or encumbrances thereon, or doing any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Act.

(b) The "business of title insurance" shall be deemed to be (1) the making as insurer, guarantor or surety, or proposing to make as insurer, guarantor or surety, of any contract or policy of title insurance, (2) the transacting or proposing to transact, any phase of title insurance including solicitation, negotiation preliminary to execution, execution of a contract of title insurance, insuring and transacting matters subsequent to the execution of the contract and arising out of it, including reinsurance, or (3) the doing, or proposing to do, any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Act.

(c) "Title Insurance Company" means any domestic company organized under the provisions of this Act for the purpose of transacting as insurer the business of title insurance, any title insurance company organized under the laws of another state, the District of Columbia or foreign government and licensed to transact as insurer the business of title insurance within this state pursuant to Section 125 (one hundred twenty-five) of this Act, and any domestic, foreign or alien company

1 having the power and authorized to transact as insurer the business of title insur-
2 ance within this state as of the effective date of this Act.

3 (d) "Applicants for Insurance" shall include all those, whether or not a prospec-
4 tive insured, who from time to time apply to a title insurance company or to its
5 agent, for title insurance, and who at the time of such application are not agents
6 for a title insurance company.

7 (e) "Rate" for title insurance means and includes the charges for the assumption
8 of the insurance risk, abstracting, searching, examination or determination of in-
9 surability and every other activity, exclusive of escrow, settlement or closing
10 charges, whether denominated premium or otherwise, made by a title insurance
11 company or an agent of a title insurance company, or either of them, to an insured
12 or to an applicant for insurance, for any policy or contract of title insurance, but
13 the term "rate" shall not include any charges paid to and retained by an attorney
14 at law, abstracter, surveyor, tax service or any other person acting in a capacity
15 other than as a title insurance agent and on behalf of a client other than a title
16 insurance company, or any charges made for special services, even though per-
17 formed in connection with a title insurance policy or contract.

18 (f) "Commissioner" means the Insurance Commissioner of this state.

19 (g) "Title Insurance Agent" means a person, firm, association, trust, corporation,
20 cooperative, joint-stock company or other legal entity authorized in writing by a
21 title insurance company to solicit title insurance, collect premiums, determine
22 insurability in accordance with the underwriting rules and standards prescribed by
23 the title insurance company which the agent represents and issue policies in its
24 behalf, provided, however, the term "title insurance agent" shall not include offi-
25 cers and salaried employees of any title insurance company.

26 (h) "Single Insurance Risk" means the insured amount of any policy or contract
27 of title insurance issued by a title insurance company unless two or more policies
28 or contracts are simultaneously issued on different estates in identical real prop-
29 erty, in which event, it means the sum of the insured amounts of all such policies
30 or contracts. However, any such policy or contract that insures a mortgage interest
31 that is excepted in a fee or leasehold policy or contract, and which does not exceed
32 the insured amount of such fee or leasehold policy or contract, shall be excluded in
33 computing the amount of a single insurance risk.

1 (i) "Net Retained Liability" means the total liability retained by a title insurance
2 company under any policy or contract of insurance, or under a single insurance
3 risk as defined in or computed in accordance with subsection (h) of Section 101
4 (one hundred one) less the amount of reinsurance ceded.

5 (j) "Domestic Title Insurance Company" means a title insurance company orga-
6 nized under the laws of this state.

7 (k) "Foreign Title Insurance Company" means a title insurance company orga-
8 nized under the laws of any other state of the United States or the District of
9 Columbia.

10 (l) "Alien Title Insurance Company" means any title insurance company incor-
11 porated or organized under the laws of any foreign nation or of any province or
12 territory thereof, not included under the definition of "Foreign Title Insurance
13 Company."

14 Section 102 *Short Title:*

15 This Act shall be known and may be cited as "The Title Insurance Act of One
16 Thousand Nine Hundred and _____".

17 Section 103 *Application of Act:*

18 The provisions of this Act shall apply to all title insurance companies, title
19 insurance rating organizations, title insurance agents, applicants for title insur-
20 ance, policyholders and to all persons and business entities engaged in the business
21 of title insurance.

22 Section 104 *Severability:*

23 The provisions of this Act shall be severable, and, if any of its provisions shall
24 be held to be unconstitutional or invalid, the decision of the court shall not affect
25 the validity of the remaining provisions of this Act. It is hereby declared as a leg-
26 islative intent that this Act would have been adopted by the Legislature of this
27 state had such unconstitutional or invalid provisions not been included therein.

28 Section 105 *Compliance with Act Required:*

29 On and after the effective date of this Act, only a title insurance company as
30 defined in sub-paragraph (c) of Section 101 (one hundred and one) of this Act,
31 shall underwrite or issue a policy of title insurance; further, no person, firm, asso-
32 ciation, corporation, cooperative, joint-stock company, trust or other legal entity
33 shall engage in the business of title insurance in this state unless authorized to

1 transact such a business by the provisions of this Act.

2 **B. TITLE INSURANCE COMPANY**

3 **Section 106 *Corporate Form Required:***

4 A domestic title insurance company shall be organized as a stock corporation as
5 provided in (here insert by reference the provisions of the insurance code of the
6 state setting forth the manner and requirements for the organization of a stock
7 insurance corporation).

8 **Section 107 *Financial Requirements:***

9 (a) Every domestic title insurance company shall have a minimum capital, which
10 shall be paid in and maintained, of not less than \$250,000.00 (two hundred fifty
11 thousand dollars) and, in addition, paid-in initial surplus of at least \$125,000.00
12 (one hundred twenty-five thousand dollars).

13 (b) Every title insurance company shall, prior to the issuance of any policy of title
14 insurance in this state, have on deposit with the Commissioner of the state of its
15 domicile the sum of \$100,000.00 (one hundred thousand dollars) as a guarantee
16 fund for the security and protection of its policyholders wherever situated, or bene-
17 ficiaries under such policies. The amount of such deposit shall be increased by the
18 sum of \$50,000.00 (fifty thousand dollars) for each state or territorial subdivision
19 of the United States or the District of Columbia, other than the state of its domi-
20 cile, in which it shall be or become qualified to engage in the business of title insur-
21 ance, less the amount required by and deposited in such other states or territorial sub-
22 divisions, provided such deposits are for the security and protection of its policyhold-
23 ers wherever situated or beneficiaries under such policies. When the aggregate of
24 amounts so deposited in this or such other states or territorial subdivisions or the Dis-
25 trict of Columbia, has reached the sum of \$750,000.00 (seven hundred fifty thousand
26 dollars) no further deposit shall be required of such title insurance company as a con-
27 dition of its qualification to engage in the business of title insurance in this state.

28 In the event any company is unable to make the deposits herein required in the
29 state of its domicile by reason of a lack of statutory authority for such deposits,
30 then such deposits may be made with the Commissioner of this state.

31 (c) The deposit required to be made by sub-paragraph (b) of this Section 107 (one
32 hundred seven) may be made in lawful money of the United States or in the classes
33 of investments authorized by the laws of the state in which such deposit is made or

1 by (here insert reference to Section of the General Insurance Laws governing
2 deposits of securities).

3 (d) Assets deposited with the Commissioner pursuant to sub-paragraph (b) of this
4 Section 107 (one hundred seven) may, with the approval of the Commissioner, be
5 exchanged from time to time for other assets which qualify under sub-paragraph
6 (c) of this Section 107 (one hundred seven).

7 (e) The depositing title insurance company shall receive the income, interest and
8 dividends on any assets deposited.

9 (f) Any title insurance company which has deposited assets with the Commissioner
10 pursuant to sub-paragraph (b) of this Section 107 (one hundred seven) may, with
11 the approval of the Commissioner, withdraw any part of the assets so deposited,
12 provided, however, that should said title insurance company continue to engage in
13 the business of title insurance, it shall not be permitted to withdraw assets that
14 would reduce the amount of its deposit below the amount required by sub-para-
15 graph (b) of this Section 107 (one hundred seven).

16 (g) Deposits made pursuant to subsection (b) of Section 107 (one hundred seven) of this
17 Act shall be for the security and protection of the insureds under the policies and con-
18 tracts of insurance issued or reinsurance assumed by such title insurance company. In
19 the event of insolvency or dissolution of such title insurance company, such deposits
20 shall continue to be retained by the Commissioner until such time as all outstanding
21 liabilities created by such policies, contracts, or reinsurance agreements have been dis-
22 charged by reinsurance or otherwise. Such deposits, or so much thereof as shall be nec-
23 essary, may be used by or with the written approval of the Commissioner in the payment
24 of claims arising under such policies, contracts or reinsurance agreements or to pur-
25 chase reinsurance thereof. Any amounts then remaining with the Commissioner shall
26 be applied first to the payment of other obligations of such title insurance company,
27 and second shall be distributed to the stockholders of such title insurance company.

28 (h) If, with respect to any title insurance company as defined in sub-paragraph (c)
29 of Section 101 (one hundred one) of this Act, this Section 107 (one hundred seven)
30 requires a greater amount of capital or surplus or deposit than required of such
31 title insurance company immediately prior to the effective date of this Act, such
32 title insurance company shall have the period ending July 1st five years after the
33 effective date of this Act within which to comply with any such increased re-

1 quirement.

2 Section 108 *Procedure When Capital Impaired:*

3 (Follow the provisions of the general insurance code of the state with respect to
4 impairment of capital of insurers.)

5 Section 109 *Determination of Insurability Required:*

6 No policy or contract of title insurance shall be written unless and until the title
7 insurance company has caused to be conducted a reasonable search and examina-
8 tion of the title and has caused to be made a determination of insurability of title
9 in accordance with its established underwriting practices. Evidence thereof shall be
10 preserved and retained in the files of the title insurance company or its agent for a
11 period of not less than fifteen years after the policy or contract of title insurance
12 has been issued. In lieu of retaining the original evidence, the title insurance com-
13 pany or the title insurance agent, may in the regular course of business establish
14 a system whereby all or part of these writings are recorded, copied or reproduced
15 by any photographic, photostatic, microfilm, micro-card, miniature photographic,
16 or other process which accurately reproduces or forms a durable medium for re-
17 producing the original. This Section shall not apply to (a) a company assuming no
18 primary liability in a contract of reinsurance, or (b) a company acting as a co-
19 insurer if one of the other co-insuring companies has complied with this Section.

20 Section 110 *General Powers:*

21 Every title insurance company shall have the power to:

22 (a) do the kinds of business defined in subsections (a) and (b) of Section 101 (one
23 hundred one) of this Act;

24 (b) do any act, directly or through a title insurance agent, incidental to the making
25 of any contract or policy of title insurance, including, but not limited to, the con-
26 ducting or holding of any escrow, settlement or closing of a transaction; and,

27 (c) provide any other services related or incidental to the sale and transfer of real
28 or personal property.

29 Section 111 *Limitations on Powers:*

30 (a) An insurer which anywhere in the United States transacts any class or kind of
31 insurance other than title insurance is not eligible for the issuance of a license to
32 transact the business of title insurance in this state, nor for the renewal thereof.

33 (b) A title insurance company shall not engage in the business of guaranteeing the

1 payment of the principal or the interest of bonds or other obligations of other
2 persons.

3 Section 112 *Joint Plant Companies:*

4 Two or more title insurance companies or two or more title insurance agents or
5 one or more title insurance companies and one or more title insurance agents may
6 make application to the Commissioner to form an association, corporation or
7 other legal entity, the purpose of which is to engage in the business of preparing
8 abstracts of title or title searches from public records or from records to be owned
9 by such entity, upon the basis of which a title insurance agent or a title insurance
10 company will issue title policies. Such application shall contain:

11 (a) a copy of the proposed articles of incorporation or association and the by-laws
12 or agreement governing the operation of such entity;

13 (b) a list of the owners or participants;

14 (c) the names and addresses of the persons to operate such entity together with a
15 description of their experience and qualifications;

16 (d) the conditions under which ownership or participation in the entity may be
17 sold or acquired;

18 (e) a statement of whether or not title information will be compiled and sold to
19 persons other than owners of or participants in the entity;

20 (f) pro forma balance sheet and other financial information to indicate the suf-
21 ficiency of financing of such entity.

22 If the Commissioner finds that such entity will be adequately financed, that the
23 persons who will be operating the entity are duly qualified and that the rules of
24 operation as expressed in the articles of incorporation or association and the by-
25 laws thereof will promote the efficiency of the operation of the subscribing owners
26 or participants and will not unduly restrict competition, he shall issue a license to
27 such entity and permit its organization. Every such application shall be granted or
28 denied in whole or in part by the Commissioner within sixty (60) days of the date
29 of its filing. Licenses issued pursuant to this Section shall remain in effect until
30 suspended or revoked by the Commissioner. The fee for said license shall be (here
31 insert amount applicable in the General Insurance Laws of the State to fees of title
32 insurance agents). Licenses issued pursuant to this Section may be suspended or
33 revoked by the Commissioner after hearing upon notice in the event the entity

1 ceases to operate as set forth in the approved application or if the Commissioner
2 determines that such operation has become a restraint on competition and not in
3 the interests of the public. Every such entity shall notify the Commissioner prompt-
4 ly of every change in sub-paragraph (a) of this Section 112 (one hundred twelve), its
5 articles of incorporation or association and its by-laws, rules and regulations gov-
6 erning the conduct of its business; and sub-paragraph (b) of this Section 112
7 (one hundred twelve) the ownership of its stock or in the participants therein or the
8 sale of any interest therein to new owners or participants.

9 All joint plant companies who are presently conducting the business as pro-
10 vided in this Section may continue such business and shall be deemed licensed
11 hereunder, provided such joint plant company shall file an application for license
12 setting forth the information called for herein within one year of the effective date
13 of this Act.

14 C. RESERVES

15 Section 113 *Unearned Premium Reserve:*

16 (a) Every domestic title insurance company shall, in addition to other reserves
17 required by this Act, establish and maintain a reserve to be known as the "un-
18 earned premium reserve" for title insurance, which shall at all times and for all
19 purposes constitute the unearned portions of premiums due or received and shall
20 be charged as a reserve liability of such title insurance company in determining its
21 financial condition.

22 (b) The unearned premium reserve shall be retained and held by such title insur-
23 ance company for the protection of the policyholders' interest in policies which
24 have not expired. Except as provided in Section 115 (one hundred fifteen) of this
25 Act, assets equal to the amount of such reserve shall not be subject to distribution
26 among depositors or other creditors or stockholders of such title insurance com-
27 pany until all claims of policyholders or holders of other title insurance contracts
28 or agreements of such title insurance company have been paid in full and all
29 liability on the policies or other title insurance contracts or agreements, whether
30 contingent or actual, have been discharged or lawfully reinsured. Income from the
31 investment of the amount of such reserve shall not be required to be added to the
32 reserve.

33 Section 114 *Amount of Unearned Premium Reserve, Release Thereof:*

- 1 (a) Every domestic title insurance company shall maintain an unearned premium
2 reserve of unencumbered assets aggregating:
- 3 (1) the amount of the unearned premium reserve held as of the effective date of
4 this Act, pursuant to or under permission granted by any prior act of the
5 legislature; and
- 6 (2) the amount of all additions required to be made to such reserve by this
7 Section, less the withdrawals therefrom as permitted by this Section.
- 8 (b) The amount of the unearned premium reserve held as of the effective date of
9 this Act, pursuant to or under permission granted by any prior act of the legisla-
10 ture, shall be released from said reserve and restored to income or surplus in the
11 manner provided by such prior act.
- 12 (c) After the effective date of this Act, every domestic title insurance company
13 shall add to its unearned premium reserve in respect to each policy or reinsurance
14 agreement issued by it, a sum equal to \$1.00 (one dollar) for each single insurance
15 risk assumed by it, plus \$.15 (fifteen cents) for each \$1,000.00 (one thousand dol-
16 lars) face amount of net retained liability, as defined in subsection (i) of Section
17 101 (one hundred one) of this Act, and shall separately record the aggregate
18 amounts so set aside and reserved in respect to such policies, contracts or agree-
19 ments written in each calendar year.
- 20 (d) The amounts set aside as additions to the unearned premium reserve shall be
21 deducted in determining net profits of any title insurance company.
- 22 (e) For the purposes of determining the amounts of the unearned premium reserve
23 that may be withdrawn pursuant to subsection (f) of this Section, and the interest
24 of the policyholders therein under Section 115 (one hundred fifteen) of this Act, all
25 policies, contracts of title insurance or reinsurance agreements of title insurance
26 shall be considered as dated on July 1st in the year of issue.
- 27 (f) The aggregate of the amounts set aside in unearned premium reserve in any
28 calendar year pursuant to subsection (c) of this Section shall be released from said
29 reserve and restored to net profits pursuant to the following formula:
- 30 One twentieth ($1/20$ th) of said aggregate sum on July 1 of each year next suc-
31 ceeding year of addition to the reserve until the entire sum shall have been so
32 released and restored to income.
- 33 (g) If substantially the entire outstanding liability under all policies, contracts of

1 title insurance or reinsurance agreements of any such title insurance company shall
2 be reinsured, the value of the consideration received by a reinsuring title insurance
3 company authorized to transact the business of title insurance in this state shall
4 constitute, in its entirety, unearned portions of original premiums and be added to
5 its unearned premium reserve and deemed, for recovery purposes, to have been
6 provided for liabilities assumed during the year of such reinsurance. The amount
7 of such addition to the unearned premium reserve of such assuming title insurance
8 company shall be not less, however, than two-thirds (2/3rds) of nor more than the
9 amount of the unearned premium reserve required to be maintained by the ceding
10 title insurance company at the time of such reinsurance.

11 Section 115 *Use of the Unearned Premium Reserve on Liquidation,*
12 *Dissolution or Insolvency:*

13 (a) If a domestic title insurance company becomes insolvent, or is in the process
14 of liquidation or dissolution, or in the possession of the Commissioner:

15 (1) such amount of the assets of such title insurance company equal to the un-
16 earned premium reserve then remaining as is necessary may be used by or
17 with the written approval of the Commissioner, to pay for reinsurance of the
18 liability of such title insurance company upon all outstanding policies or
19 contracts or reinsurance agreements of title insurance, as to which claims
20 for losses by the holders are not then pending, the balance, if any, of assets
21 equal to the unearned premium reserve then remaining, then to be trans-
22 ferred to the general assets of the title insurance company;

23 (2) the assets other than the unearned premium reserve shall be available to pay
24 claims for losses sustained by holders of policies then pending or arising up
25 to the time reinsurance is effected. In the event that claims for losses are in
26 excess of such other assets of the title insurance company, such claims, when
27 established, shall be paid pro rata out of the surplus assets attributable to the
28 unearned premium reserve, to the extent of such surplus, if any.

29 (b) In the event that reinsurance is not obtained, the unearned premium reserve
30 and assets constituting minimum capital, or so much as remains thereof after out-
31 standing claims have been paid, shall constitute a trust fund to be held by the
32 Commissioner for 20 (twenty) years, out of which claims of policyholders shall be
33 paid as they arise. The balance, if any, of such fund shall, at expiration of 20

1 (twenty) years, revert to the general assets of the title insurance company.

2 Section 116 *Reserve for Unpaid Losses and Loss Expenses:*

3 (a) Each domestic title insurance company shall at all times establish and main-
4 tain, in addition to other reserves, a reserve:

5 (1) against unpaid losses, and (2) against loss expense, and shall calculate such
6 reserves by making a careful estimate in each case of the loss and loss ex-
7 pense likely to be incurred, by reason of every claim presented, pursuant to
8 notice from or on behalf of the insured, of a title defect in or lien or adverse
9 claim against the title insured, that may result in a loss or cause expense to
10 be incurred for the proper disposition of the claim. The sums of the items
11 so estimated shall be the total amounts of the reserves against unpaid losses
12 and loss expenses of such title insurance company.

13 (b) The amounts so estimated may be revised from time to time as circumstances
14 warrant, but shall be redetermined at least once each year.

15 (c) The amounts set aside in such reserves in any year shall be deducted in deter-
16 mining the net profits for such year of such title insurance company.

17 Section 117 *Reserve Requirements - Foreign and Alien Title Insurers:*

18 Every foreign or alien title insurance company licensed to transact the business
19 of title insurance in this state shall reserve and maintain as to its business in this
20 state the same reserves as are required of domestic companies under the provisions
21 of this Act, unless by the laws of the state or the District of Columbia or country
22 of domicile of such company there is required to be set aside and maintained
23 reserves in substantially a like amount as is required of domestic companies by
24 this Act.

25 D. *LIMIT OF NET RETENTION*

26 Section 118 *Net Retained Liability:*

27 The net retained liability of any title insurance company under any single title
28 insurance risk assumed in this state as defined in subsections (i) and (j) of Section
29 101 (one hundred one) of this Act shall not exceed 50% (fifty per cent) of the net
30 amount remaining after deducting from the sum of its capital, surplus, unearned
31 premium reserve and voluntary reserves, the value, if any, assigned in such sum-
32 mation to its title plants, all as shown in its most recent report on file with the
33 Commissioner. The same limitation shall apply to any secondary risk assumed by

1 means of reinsurance or to any policy of excess co-insurance. Upon application by
2 a title insurance company and the showing of good cause therefor the Commis-
3 sioner may waive such limitation in connection with the assumption of a particular
4 risk.

5 Nothing in this Section is intended to limit the amount of a single insurance risk,
6 as defined in subsection (h) of Section 101 (one hundred one) of this Act, that may
7 be written or assumed by a title insurance company, provided it shall cede to one
8 or more other title insurance companies, on or before the effective date of such
9 writing or assumption, such portion, or portions, of the said risk as shall be suf-
10 ficient to bring its net retained liability thereunder within the limits hereinabove
11 set forth; and provided, further, that each such cession of risk shall also be within
12 the limits of this Section as applied to the sum of the capital, surplus, unearned
13 premium reserve and voluntary reserves, less the value, if any, assigned in such
14 summation to the title plants of the assuming and reinsuring title insurance com-
15 pany, as shown by its most recent report on file with the supervisory agency in the
16 state of its domicile.

17 E. REINSURANCE

18 Section 119 *Power to Reinsure:*

19 Any title insurance company authorized to engage in the business of title insur-
20 ance in this state may cede reinsurance of all or any part of its liability under one
21 or more of its policies or contracts or reinsurance agreements to any title insurance
22 company authorized to engage in the business of title insurance in this or any
23 other state or the District of Columbia; provided, however, that no larger amount
24 of reinsurance shall be assumed by any title insurance company on a single policy,
25 or contract of title insurance, or on any single title insurance risk as defined in sub-
26 section (h) of Section 101 (one hundred one) of this Act, than such title insurance
27 company would be permitted to retain if authorized to engage in the business of
28 title insurance in this state. It may also reinsure policies of title insurance issued
29 by other companies on risks whether located in this state or elsewhere. Any title
30 insurance company authorized to transact business in this state shall pay to this
31 state taxes required on all business taxable within this state and reinsured, as pro-
32 vided in this Section, with any foreign or alien company not authorized to do busi-
33 ness within this state. Issuance of contracts of reinsurance by a title insurance

1 company not authorized to engage in the business of title insurance in this state,
 2 but authorized to engage in the business of title insurance in any of the United
 3 States or the District of Columbia, reinsuring a title insurance company author-
 4 ized to engage in the business of title insurance in this state on property located in
 5 this state, shall not of itself constitute the doing of business in this state by such
 6 reinsuring company.

7 F. INVESTMENTS

8 Section 120 *Minimum Capital:*

9 (General insurance laws of this state governing investments of insurance com-
 10 panies shall be applicable to title insurance companies.)

11 Section 121 *Funds in Excess of Minimum Capital:*

12 (a) (General insurance laws of this state governing investments of insurance com-
 13 panies shall be applicable to title insurance companies.)

14 (b) Title Plants. Provided it shall at all times comply with the minimum capital
 15 investment requirements of Section 120 (one hundred and twenty), a title insurance
 16 company may invest in title plants. Any title plant shall be considered an asset at
 17 the fair value thereof. In determining the fair value of a title plant, no value shall
 18 be attributed to furniture and fixtures, and the real estate in which the title plant
 19 is housed shall be carried as real estate. The value of title abstracts, title briefs,
 20 copies of conveyances or other documents, indices and other records comprising
 21 the title plant shall be determined by considering the expenses incurred in obtain-
 22 ing them, the age thereof, the cost of replacements less depreciation, and all other
 23 relevant factors. Once the value of a title plant shall have been determined here-
 24 under, such value may be increased only by the acquisition of another title plant by
 25 purchase, consolidation or merger; in no event shall the value of the title plant be
 26 increased by additions made thereto as part of the normal course of abstracting
 27 and insuring titles to real estate. Subject to the above limitations and with the
 28 approval of the Commissioner as provided by Section 112 (one hundred twelve) of
 29 this Act, a title insurance company may enter into agreements with others whereby
 30 they participate in the use, ownership, management and control of a title plant to
 31 service the needs of all such companies or such companies may hold stock of a
 32 corporation owning and operating a title plant for such purposes.

33 Section 122 *Investments Acquired before Effective Date:*

1 Any investment of a domestic title insurance company lawfully acquired before
2 the effective date of this Act and which but for this Section would be considered
3 ineligible as an investment on such effective date shall be disposed of within 5 (five)
4 years from such effective date. The Commissioner, upon application and proof that
5 forced sale of any such investment would be contrary to the best interests of the
6 title insurance company and its policyholders, may extend the period for sale or
7 disposal of such investment for a further reasonable time.

8 Section 123 *Trust Funds:*

9 For those title insurance companies which also have powers to do a trust busi-
10 ness, trust funds or assets held in a fiduciary capacity shall be invested in accord-
11 ance with the statutes of this state governing trust companies.

12 Section 124 *Open Section*

13 G. FOREIGN AND ALIEN COMPANIES

14 Section 125 *Requisites for Foreign and Alien Title Insurance Companies*

15 *to do Business:*

16 Any foreign or alien title insurance company shall be licensed to transact a title
17 insurance business within this state only if such company is and remains of the
18 same standard of solvency and complies with other requirements fixed by the laws
19 of this state for domestic title insurance companies. No title insurance company
20 shall be licensed to do business until:

21 (a) it has filed with the Commissioner a certified copy of its charter, a statement
22 of its financial condition and business, signed and sworn to by its proper officers,
23 and copies of forms of all policies it proposes to issue in this state, with such other
24 information as the Commissioner may require, and

25 (b) it has satisfied the Commissioner that it is fully and legally organized under the
26 laws of its state or the District of Columbia or government to do the business it
27 proposes to transact and that it has the requisite amount of capital, fully paid up
28 and unimpaired, and

29 (c) it shall, by a duly executed instrument filed in his office, constitute and appoint
30 the Commissioner its true lawful attorney, upon whom all lawful processes in any
31 action, rule, order or legal proceeding against it may be served; and therein shall
32 agree that any lawful process against it which may be served upon him as its said
33 attorney shall be of the same force and validity as if served on the company, and

1 that the authority thereof shall continue in force irrevocably so long as any liabil-
 2 ity of the company remains outstanding in this state.

3 Section 126 *Foreign and Alien Title Insurance Companies;*

4 *Transaction of Business:*

5 No foreign or alien title insurance company licensed to transact business in this
 6 state shall make, write, place or cause to be made, written or placed any policy or
 7 contract of insurance covering property in this state except:

8 (a) through a title insurance agent as defined in Section 101 (one hundred one)
 9 (g) of this Act who or which is a resident of this state or maintains his, her or its
 10 principal place of business in this state, or

11 (b) through a bona fide branch office located in this state and under the direction
 12 and control of such title insurance company, all expenses of which branch office,
 13 including compensation of all employees, are paid by such title insurance com-
 14 pany, or

15 (c) through a subsidiary title insurance company licensed to do business in this
 16 state.

17 This Section shall not be applicable to contracts of reinsurance.

18 H. *MERGERS, CONSOLIDATIONS AND ACQUISITIONS*

19 (The insurance laws of this state shall be applicable.)

20 Section 127 *Open Section*

21 Section 128 *Open Section*

22 Section 129 *Open Section*

23 I. *AGENTS*

24 Section 130 *Title Insurance Agents, Names to be Certified to Commissioner:*

25 Every title insurance company authorized to transact business within this state
 26 shall certify annually to the Commissioner the names of all title insurance agents
 27 representing it in this state.

28 Section 131 *Title Insurance Agents, to be Licensed:*

29 (a) Title insurance agents shall be licensed in the manner provided for agents of
 30 insurance companies in (here insert by reference the sections of the insurance code
 31 of the particular state governing the licensing of agents of insurance companies),
 32 provided:

33 (1) All applicants for a title insurance agent's license shall be required to qualify

1 for such license by taking an examination of sufficient scope to satisfy the
2 Commissioner that the applicant has sufficient knowledge of, and is reason-
3 ably familiar with, the title insurance laws of this state and with the provi-
4 sions, terms and conditions of title insurance and has an adequate under-
5 standing of the duties and obligations of a title insurance agent.

6 (2) If the applicant for a title insurance agent's license is a firm, association,
7 corporation, cooperative, joint-stock company or other legal entity, the
8 members, officers and employees of the applicant who intend to exercise the
9 power and perform the duties of the agency shall be required to take the
10 examination required of applicants by sub-section (1) of this Section; pro-
11 vided, however, that those employees performing only clerical functions not
12 requiring the knowledge and understanding of title insurance agents shall
13 not be required to take said examination.

14 (3) All applicants for title insurance agent's license who are presently acting as
15 title insurance agents shall not be required to take an examination for such
16 license if application for the issuance of such license is filed with the Com-
17 missioner within a period of 6 (six) months immediately following the effec-
18 tive date of this Act.

19 (b) Licenses of title insurance agents shall expire annually at _____
20 _____, unless revoked sooner by the Commissioner, or unless the
21 agency relationship shall be terminated sooner between the title insurance com-
22 pany and the agent. If terminated by the title insurance company, such company
23 shall report to the Commissioner the circumstances giving rise to such termination.

24 (c) Title insurance agents' licenses shall be renewed annually on the filing of an
25 application containing such information as the Commissioner deems necessary.

26 (d) The Commissioner may, upon application to him by a person, firm, associa-
27 tion, corporation, cooperative, joint-stock company or other legal entity grant to
28 such applicant a temporary license as a title insurance agent. Such license shall
29 remain in force and effect for a period of six (6) months or until the expiration of
30 sixty (60) days after the next regularly scheduled examination for applicants for
31 title insurance agents' license, whichever period is the longer. In the event of fail-
32 ure of the applicant to qualify for a regular title insurance agent's license as in this
33 Section provided, no renewal or extension may be granted to any temporary license

1 held by said applicant.

2 Section 132 *Title Insurance Agents, Books and Records:*

3 (a) Every title insurance agent shall maintain its books of account and record and
4 vouchers pertaining to the business of title insurance in such a manner that the
5 Commissioner, or his authorized representatives, may readily ascertain from time
6 to time whether the agent has complied with all the provisions of this Act.

7 (b) A title insurance agent may engage in the business of handling escrows, settle-
8 ments and closings in connection with the business of title insurance, provided:

9 (1) agent shall maintain a separate record of all receipts and disbursements
10 of escrow funds and shall not commingle any such funds with agent's own
11 funds or with funds held by agent in any other capacity, and

12 (2) agent shall comply with such standards of solvency as the Commissioner
13 may from time to time require.

14 (c) If at any time the Commissioner shall determine that an agent has failed to
15 comply with any of the provisions of this Section, the Commissioner may, after a
16 hearing conducted in accordance with the provisions of (here insert by reference
17 the applicable laws of the state relating to such hearings), revoke the license of
18 said agent.

19 Section 133 *Title Insurance Agents, Replies to Inquiries by Commissioner:*

20 Every title insurance agent shall reply in writing promptly, with a copy thereof
21 to each title insurance company for which said agent is acting, to any inquiry of
22 the Commissioner relative to his acts as a title insurance agent and failure to reply
23 shall be a ground for revocation of the agent's license. A copy of any such inquiry
24 shall also be sent by the Commissioner to each title insurance company for which
25 said agent is acting.

26 Section 134 *Title Insurance Agents, Certain Names Prohibited:*

27 After the effective date of this Act, no agent for a title insurance company shall
28 adopt a firm name containing the words "title insurance", "title guaranty", or
29 "title guarantee", unless such words are followed by the words "agent" or
30 "agency" in the same size and type as the words preceding them. This Section shall
31 not apply to a title insurance company acting as agent for another title insurance
32 company.

33 J. *DIVISION OF RATES*

1 Section 135 *Open Section*

2 Section 136 *Rebates Prohibited:*

- 3 (a) No title insurer and no officer, employee, attorney, agent or solicitor thereof,
 4 shall pay, allow or give or offer to pay, allow or give, directly or indirectly, as an
 5 inducement to obtaining any title insurance business, any rebate, reduction or
 6 abatement of any rate or charge made incident to the issuance of such insurance,
 7 any special favor or advantage, or any money consideration or inducement what-
 8 ever. The words "charge made incident to the issuance of such insurance" shall be
 9 construed to include, without limitation, escrow, settlement and closing charges.
- 10 (b) No insured named in a title insurance policy nor any other person directly or
 11 indirectly connected with the transaction involving the issuance of said policy,
 12 including, but not limited to, mortgage lender, real estate broker, builder or attor-
 13 ney, or any officer, employee, agent, representative or solicitor thereof, or any
 14 other person whatsoever, shall knowingly receive or accept, directly or indirectly,
 15 any such rebate, reduction or abatement of any such charge, or any such special
 16 favor or advantage, or any such monetary consideration or inducement whatever.
- 17 (c) Nothing in this section shall be construed as prohibiting (1) the payment of fees
 18 for services actually rendered either to a title insurance company or to a title
 19 insurance agent in connection with a title insurance transaction, or, (2) the pay-
 20 ment of an earned commission to a duly appointed title insurance agent who ac-
 21 tually issues the policy of title insurance.

22 Section 137 *Open Section*

23 Section 138 *Personal or Controlled Insurance:*

24 As used in this Act "personal or controlled insurance" means a policy of title
 25 insurance where the insured or one of the insureds under such policy is, or the
 26 loss thereunder is payable to:

- 27 (a) the title insurance company issuing such policy, or
- 28 (1) any person or corporation directly or indirectly owning or controlling a
 29 majority of the voting stock or controlling interest in such title insurance
 30 company, or
- 31 (2) any corporation which is directly or indirectly controlled by a person or
 32 corporation which also controls the title insurance company as described
 33 in (1) of this subsection (a), or

(3) any corporation making consolidated returns for United States income tax purposes with such title insurance company or any corporation described in (1) or (2) of this subsection (a).

(b) the title insurance agent issuing such policy, or

(1) If such title insurance agent is a natural person:

(i) his spouse, his employer or his employer's spouse, or

(ii) any person related to him or the persons mentioned in (i) of subparagraph (1) of this subsection (b) within the second degree by blood or marriage, or

(iii) if his employer is a corporation, any person directly or indirectly owning or controlling a majority of the voting stock or controlling interest in such corporation, or

(iv) if his employer is a partnership or association, any person owning an interest in such partnership or association.

(2) If such title insurance agent is a corporation:

(i) any person directly or indirectly owning or controlling a majority of the voting stock or controlling interest in such corporation, or

(ii) any corporation which is directly or indirectly controlled by a person who also controls the title insurance agent as described in (i) of subparagraph (2) of this subsection (b), or

(iii) any corporation making consolidated returns for United States income tax purposes with any corporation described in (i) or (ii) of subparagraph (2) of this subsection (b).

If the rates and charges for personal or controlled insurance from any one source so issued in any one calendar year received by a title insurance company or by a title insurance agent shall exceed twenty-five per cent (25%), or from all such sources shall exceed fifty per cent (50%) of the total rates and charges received by such title insurance company or by such title insurance agent for title insurance issued in the same year, the excess shall be deemed to be unlawful rebate.

For the purpose of this Section, if the interest of a title insurance company or a title insurance agent is or was held by such title insurance company or title insurance agent in a fiduciary capacity for the true or beneficial owner of such property, then the issuance of an insurance policy covering a transaction by which the title is

1 conveyed to or by a title insurance company or title insurance agent shall not be
2 deemed controlled insurance.

3 Section 139 *Examination of Records:*

4 The Commissioner, if he has reason to believe that any title insurance agent has
5 violated or is violating any of the provisions of Section 136 (one hundred thirty-
6 six) or 138 (one hundred thirty-eight) of this Act, shall forthwith examine said
7 title insurance agent's books of account and record and vouchers pertaining to the
8 business of title insurance, and any said title insurance agent so examined shall
9 pay to the Commissioner the cost of such examination on demand.

10 Section 140 *Additional Penalty:*

11 Any person or persons who violate Section 136 (one hundred thirty-six) or Sec-
12 tion 138 (one hundred thirty-eight) of this Act shall be jointly and severally liable
13 to the people of this state for five times the amount or value of any such unlawful
14 rebate, reduction or abatement of any rate or charge made incident to the issuance
15 of title insurance, any special favor or advantage, or any monetary consideration
16 or inducement.

17 Section 141 *Permitted Division of Rates:*

18 Nothing in this Act prohibits the division of rates and charges between or among
19 a title insurance company and its agent, two or more title insurance companies,
20 one or more title insurance companies and one or more title insurance agents, or
21 two or more title insurance agents, provided such division of rates and charges
22 does not constitute an unlawful rebate under the provisions of this Act and is not
23 in payment of a forwarding fee or finder's fee.

24 ~~K~~ *RATES, RATING ORGANIZATIONS AND RATE MAKING PROCEDURE*

25 Section 142 *General Provisions:*

26 The purposes of Sections 143 (one hundred forty-three) to 154 (one hundred
27 fifty-four), inclusive, of this Act are to promote the public welfare by regulating
28 title insurance rates to the end that they shall not be excessive, inadequate or un-
29 fairly discriminatory, and to authorize cooperative action between or among title
30 insurance companies in rate making and other matters within the scope of said
31 Sections. Nothing herein is intended (1) to prohibit or discourage reasonable com-
32 petition, or (2) to prohibit or discourage, except to the extent necessary to accom-
33 plish the purposes stated above, uniformity in title insurance rates, rating systems

1 and rating plans and practices. The provisions of Section 143 (one hundred forty-
2 three) to 154 (one hundred fifty-four), inclusive, shall be literally interpreted to
3 make effective the purposes thereof as outlined in this Section.

4 Section 143 *Rate Filing*:

5 (a) Every title insurance company shall file with the Commissioner its schedules
6 of rates, every manual of classifications, rules and plans pertaining thereto, and
7 every modification of any of the foregoing which it proposes to use in this state.
8 Every such filing shall state the proposed effective date thereof, and shall indicate
9 the character and extent of the coverage contemplated.

10 (b) A title insurance company may satisfy its obligations to make such filings by
11 becoming a member of, or a subscriber to, a licensed title insurance rating organi-
12 zation which makes such filings, and by authorizing the Commissioner to accept
13 such filings on its behalf.

14 (c) The Commissioner shall make such review of the filings as may be necessary to
15 carry out the provisions of this Act.

16 (d) Subject to the provisions of subsection (f) of this Section, each filing shall be
17 on file for a period of thirty (30) days before it becomes effective. The Commis-
18 sioner may, upon written notice given within such period to the person making the
19 filing, extend such waiting period for an additional period, not to exceed thirty
20 (30) days, to enable him to complete the review of the filing. Further extensions of
21 such waiting period may also be made with the consent of the title insurance com-
22 pany or rating organization making the filing. Upon written application by the title
23 insurance company or rating organization making the filing, the Commissioner
24 may authorize a filing or any part thereof which he has reviewed, to become effec-
25 tive before the expiration of the waiting period or any extension thereof.

26 (e) Except in the case of rates filed under subsection (f) of this Section, a filing
27 which has become effective shall be deemed to meet the requirements of this Act.

28 (f) When the Commissioner finds that any rate for a particular kind or class of
29 risk cannot practicably be filed before it is used, or any contract or kind of title
30 insurance, by reason of rarity or peculiar circumstances, does not lend itself to
31 advance determination and filing of rates, he may, under such rules and regulations
32 as he may prescribe, permit such rate to be used without a previous filing and
33 waiting period.

(g) Beginning ninety (90) days after the effective date of this Act, no title insurance company or agent of a title insurance company shall charge any rate for any policy or contract of title insurance except in accordance with filings or rates which are in effect for said title insurance company as provided in this Act, or in accordance with subsection (f) of this Section.

(h) The Commissioner shall not regulate, or require the filing of, rates paid by title insurance companies for reinsurance contracts or agreements, or policies of excess coinsurance.

Section 144 *Justification for Rates:*

A rate filing shall be accompanied by a statement of the title insurance company or title insurance rating organization making the filing, setting forth the basis upon which the rate was determined, and the rates are to be computed. Any filing may be justified by:

- (1) the experience or judgment of the title insurance company or title insurance rating organization making the filing, or
- (2) its interpretation of any statistical data relied upon, or
- (3) the experience of other title insurance companies or title insurance rating organizations, or
- (4) any other factors which the title insurance company or title insurance rating organization deem relevant.

The statement and justification shall be open to public inspection.

Section 145 *Making of Rates:*

(a) Every title insurance company that shall make its own rates, and every title insurance rating organization, shall make rates that are not excessive or inadequate and which do not unfairly discriminate between risks in this state which involve essentially the same exposure to loss and expense elements, and which shall give due consideration to the following matters:

- (1) the desirability for stability of rate structures;
- (2) the necessity of assuring the financial solvency of title insurance companies in period of economic depression by encouraging growth in assets of title insurance companies in periods of high business activity; and
- (3) the necessity for assuring a reasonable margin of underwriting and operating profit.

1 (b) Every title insurance company that shall make its own rates, and every title
2 insurance rating organization, shall adopt basic classifications of policies or con-
3 tracts of title insurance which shall be used as the basis for rates.

4 (c) Rates within each rate classification may, at the discretion of the title insur-
5 ance company that files its own rates, or at the discretion of the title insurance
6 rating organization, be less than the cost of the expense elements in the case of
7 smaller insurances, and the excess may be charged against the larger insurances
8 without rendering the rates unfairly discriminatory.

9 Section 146 *Disapproval of Filings:*

10 (a) Upon the review at any time by the Commissioner of a filing, he shall, before
11 issuing an order of disapproval, hold a hearing upon not less than ten (10) days
12 written notice, specifying in reasonable detail the matters to be considered at such
13 hearing, to every title insurance company and title insurance rating organization
14 which made such filing, and if, after such hearing, he finds that such filing or a part
15 thereof does not meet the requirements of this Act, he shall issue an order spec-
16 ifying in what respects he finds that it so fails, and stating when, with a reasonable
17 period thereafter, such filing or a part thereof shall be deemed no longer effective
18 if the filing or a part thereof has become effective under the provisions of Section
19 143 (one hundred forty-three) of this Act. A title insurance company or title insur-
20 ance rating organization shall have the right at any time to withdraw a filing or a
21 part thereof, subject to the provisions of Section 148 (one hundred forty-eight) of
22 this Act in the case of a deviation filing. Copies of said order shall be sent to every
23 title insurance company and title insurance rating organization affected. Said order
24 shall not affect any contract or policy made or issued prior to the expiration of the
25 period set forth in said order.

26 (b) Any person or organization aggrieved with respect to any filing which is in
27 effect, may make written application to the Commissioner for a hearing thereon.
28 The title insurance company or title insurance rating organization that made the
29 filing shall not be authorized to proceed under this subsection. Such application
30 shall specify in reasonable detail the grounds to be relied upon by the applicant.
31 If the Commissioner shall find that the application is made in good faith, that the
32 applicant would be so aggrieved if his grounds are established, and that such
33 grounds otherwise justify holding such a hearing, he shall, within thirty (30) days

1 after receipt of such application, hold a hearing upon not less than ten (10) days
 2 written notice to the applicant and to every title insurance company and title insur-
 3 ance rating organization which made such a filing. If, after such hearing, the Com-
 4 missioner finds that the filing or a part thereof does not meet the requirements of
 5 this Act, he shall issue an order specifying in what respects he finds that such filing
 6 or a part thereof fails to meet the requirements of this Act, stating when within a
 7 reasonable period thereafter, such filing or a part thereof shall be deemed no longer
 8 effective. Copies of said order shall be sent to the applicant and to every such title
 9 insurance company and title insurance rating organization. Said order shall not
 10 affect any contract or policy made or issued prior to the expiration of the period
 11 set forth in said order.

12 (c) No filing nor any modification thereof shall be disapproved if the rates in con-
 13 nection therewith meet the requirements of this Act.

14 Section 147 *Title Insurance Rating Organizations:*

15 (a) A corporation, an unincorporated association, a partnership or an individual,
 16 whether located within or outside this state, may make application to the Com-
 17 missioner for license as a rating organization for title insurance companies, and
 18 shall file therewith:

- 19 (1) a copy of its constitution, its articles of agreement or association or its cer-
 20 tificate of incorporation, and of its by-laws, rules and regulations governing
 21 the conduct of its business;
- 22 (2) a list of its members and subscribers;
- 23 (3) the name and address of a resident of this state upon whom notices or orders
 24 of the Commissioner or process affecting such rating organizations may be
 25 served; and
- 26 (4) a statement of its qualifications as a title insurance rating organization.

27 If the Commissioner finds that the applicant is competent, trustworthy and
 28 otherwise qualified to act as a title insurance rating organization, and that its
 29 constitution, articles of agreement or association or certificate of incorporation,
 30 and its by-laws, rules and regulations governing the conduct of its business con-
 31 form to the requirements of the law, he shall issue a license authorizing the appli-
 32 cant to act as a rating organization for title insurance. Every such application shall
 33 be granted or denied in whole or in part by the Commissioner within sixty (60)

1 days of the date of its filing with him. Licenses issued pursuant to this Section shall
2 remain in effect for three (3) years unless sooner suspended or revoked by the
3 Commissioner or withdrawn by the licensee. The fee for said license shall be (here
4 insert amount applicable in the general insurance laws of the state to fees for
5 licensing rating organizations). Licenses issued pursuant to this Section may be
6 suspended or revoked by the Commissioner, after hearing upon notice, in the event
7 the title insurance rating organization ceases to meet the requirements of this sub-
8 section. Every such rating organization shall notify the Commissioner promptly of
9 every change in:

- 10 (1) its constitution, its articles of agreement or association or its certificate of
11 incorporation, and its by-laws, rules and regulations governing the conduct
12 of its business;
- 13 (2) its list of members and subscribers; and
- 14 (3) the name and address of the resident of this state designated by it upon
15 whom notices or orders of the Commissioner or process affecting such rating
16 organization may be served.

17 (b) Subject to rules and regulations which have been approved by the Commis-
18 sioner as reasonable, each title insurance rating organization shall permit any title
19 insurance company to be a member or a subscriber to its rating services at a rea-
20 sonable cost and without discrimination or to withdraw therefrom.

21 (c) Notices of proposed changes in the rules and regulations shall be given to
22 members and subscribers. The reasonableness of any rule or regulation in its ap-
23 plication to subscribers, or the refusal of any such rating organization to admit a
24 title insurance company as a subscriber, shall, at the request of any subscriber or
25 any such title insurance company, be reviewed by the Commissioner at a hearing
26 held upon at least ten (10) days written notice to such rating organization and to
27 such subscriber. If the Commissioner finds that such rule or regulation is unreason-
28 able in its application to subscribers, he shall order that such rule or regulation
29 shall not be applicable to subscribers. If the rating organization fails to grant or
30 reject an application of a title insurance company for subscribership within thirty
31 (30) days after it was made, the title insurance company may request a review by
32 the Commissioner as if the application had been rejected. If the Commissioner
33 finds that the title insurance company has been refused admittance to the title

1 insurance rating organization as a subscriber without justification, he shall order
2 said rating organization to admit the title insurance company as a subscriber. If he
3 finds that the action of the title insurance rating organization was justified, he shall
4 make an order affirming its action.

5 (d) Cooperation among title insurance rating organizations, or among such rating
6 organizations and title insurance companies, and concert of action among title
7 insurance companies under the same general management and control in rate
8 making or in other matters within the scope of this Act is hereby authorized, pro-
9 vided the filings resulting therefrom are subject to all the provisions of this Act
10 which are applicable to filings generally.

11 Two or more title insurance companies who are members of or subscribers to a
12 rating organization may act in concert with each other with respect to any matters
13 pertaining to the making of rates or rating systems, the preparation or making of
14 insurance policy forms, underwriting rules, surveys, inspections and investigations,
15 the furnishing of loss or expense statistics or other information and data, or carry-
16 ing on of research.

17 The Commissioner may review such activities and practices and if, after a hear-
18 ing, he finds that any such activity or practice is unfair or unreasonable or other-
19 wise inconsistent with the provisions of this Act, he may issue a written order
20 specifying in what respects such activity or practice is unfair or unreasonable or
21 otherwise inconsistent with the provisions of this Act and requiring the discon-
22 tinuance of such activity or practice.

23 Section 148 *Deviations:*

24 Every member of or subscriber to a title insurance rating organization shall ad-
25 here to the filings made on its behalf by such organization, except that any title
26 insurance company which is a member of or subscriber to such a rating organiza-
27 tion may file with the Commissioner a decrease or increase to be applied to any or
28 all elements of the rates produced by the rating system so filed for a class of title
29 insurance which is found by the Commissioner to be a proper rating unit for the
30 application of such decrease or increase, or to be applied to the rates for a particu-
31 lar area. Such deviation filing shall specify the basis for the modification and shall
32 be accompanied by the data or historical pattern upon which the applicant relies.
33 A copy of the deviation filing and data shall be sent simultaneously to such rating

1 organization. Any such deviation filing shall be on file for a waiting period of fif-
2 teen (15) days before it becomes effective. Extension of such waiting period may be
3 made in the same manner that such period is extended in the case of rate filings.
4 The Commissioner may authorize a deviation filing or any part thereof to become
5 effective before the expiration of the waiting period or any extension thereof.
6 Deviation filings shall be subject to the provisions of Section 146 (one hundred
7 forty-six) of this Act. Each deviation shall be effective for one (1) year unless termi-
8 nated sooner with the approval of the Commissioner, or in accordance with the
9 provisions of Section 146 (one hundred forty-six) of this Act.

10 Section 149 *Appeal by Minority:*

11 Any member of or subscriber to a title insurance rating organization may appeal
12 to the Commissioner from any action or decision of such rating organization in
13 approving or rejecting any proposed change in or addition to the filings of such
14 rating organization, and the Commissioner shall, after a hearing held upon not
15 less than ten (10) days written notice to the appellant and to such rating organiza-
16 tion, issue an order approving the action or decision of such rating organization
17 or directing it to give further consideration to such proposal and to take action or
18 make a decision upon it within thirty (30) days. If such appeal is from the action
19 or decision of the title insurance rating organization in rejecting a proposed addi-
20 tion to its filings, he may, in the event he finds that such action or decision was
21 unreasonable, issue an order directing said rating organization to make an addi-
22 tion to its filings, on behalf of its members and subscribers, in a manner consistent
23 with his findings, within a reasonable time after the issuance of such order. If the
24 appeal is from the action of the title insurance rating organization with regard to
25 a rate or a proposed change in or addition to its filings relating to the character
26 and extent of coverage, he shall approve the action of said rating organization or
27 such modification thereof as shall have been suggested by the appellant, if either
28 be in accordance with this Act.

29 The failure of a title insurance rating organization to take action or make a
30 decision within thirty (30) days after submission to it of a proposal under this
31 Section shall constitute a rejection of such proposal within the meaning of this
32 Section. If such appeal is based upon the failure of said rating organization to
33 make a filing on behalf of such member or subscriber which is based on a system

1 of expense allocation which differs, in accordance with the right granted in sub-
2 section (c) of Section 145 (one hundred forty-five) of this Act from the system of
3 expense allocation included in a filing made by said rating organization, the Com-
4 missioner shall, if he grants the appeal, order the rating organization to make the
5 requested filing for use by the appellant. In deciding such appeal, the Commis-
6 sioner shall apply the standards set forth in Section 145 (one hundred forty-five)
7 of this Act.

8 Section 150 *Rate Administration; Authority and Duties of Commissioner;*

9 *Rules and Regulations:*

10 (a) The Commissioner may, in his discretion, prescribe by regulation rules rea-
11 sonably adaptable to each of the rating systems on file with him, uniform classifi-
12 cation of accounts to be observed, statistics to be reported and uniform forms for
13 reporting such data by all title insurance companies and title insurance rating
14 organizations. No such regulation shall be promulgated by the Commissioner ex-
15 cept after a hearing held upon notice to all title insurance companies and title
16 insurance rating organizations. Any such regulation, or amendment thereto, shall
17 be promulgated by the Commissioner not less than six months prior to the first
18 day of the calendar year during which such regulation or amendment shall take
19 effect. Any title insurance company or title insurance rating organization aggrieved
20 by such rules or regulations, shall have the right to file suit in the (here insert
21 designation of proper court) of (here insert county in which state capital is lo-
22 cated) County, within thirty (30) days to determine the validity or reasonableness
23 of such rule or regulation; such suit to be tried as provided in (here insert reference
24 to proper section of General Insurance Laws).

25 (b) Reasonable rules and plans may be promulgated by the Commissioner for the
26 interchange of data necessary for the application of rating plans.

27 (c) In order to further uniform administration of rate regulatory laws, the Com-
28 missioner and every title insurance company and title insurance rating organization
29 may exchange information and experience data with insurance supervisory of-
30 ficials, title insurance companies and title insurance rating organizations in other
31 states, and may consult with them and with each other with respect to rate making
32 and the application of rating system.

33 Section 151 *False or Misleading Information:*

1 No title insurance company or title insurance agent shall willfully withhold infor-
2 mation from, or knowingly give false or misleading information to, the Commis-
3 sioner, or to any title insurance rating organization of which the title insurance
4 company is a member or subscriber, which will affect the rates chargeable under
5 this Act.

6 Section 152 *Penalties:*

7 The Commissioner may, if he finds that any title insurance rating organization,
8 title insurance company, or title insurance agent has violated any provision of this
9 Act, impose a penalty of not more than fifty dollars (\$50.00) for each such viola-
10 tion, but if he finds such violation to be willful, he may impose a penalty of not
11 more than five hundred dollars (\$500.00) for each such violation. Such penalties
12 may be in addition to any other penalty provided by law.

13 The Commissioner may suspend the license of any title insurance rating organi-
14 zation, title insurance company, or title insurance agent which fails to comply
15 with an order of the Commissioner within the time limited by such order, or any
16 extension thereof, which the Commissioner may grant. The Commissioner shall not
17 suspend the license of any such rating organization, company or agent for failure
18 to comply with an order until the time prescribed for an appeal therefrom has
19 expired, or, if an appeal has been taken, until such order has been affirmed.

20 The Commissioner may determine when a suspension of license shall become
21 effective, and it shall remain in effect for the period fixed by him, unless he modi-
22 fies or rescinds such suspension, or until the order upon which such suspension is
23 based is modified, rescinded or reversed.

24 No penalty shall be imposed and no license shall be suspended or revoked ex-
25 cept upon a written order of the Commissioner, stating his findings, made after a
26 hearing held upon not less than ten (10) days written notice to such person or
27 organization, specifying the alleged violation.

28 Section 153 *Hearing Procedure:*

29 (a) Any title insurance company, title insurance rating organization or person
30 aggrieved by any action of the Commissioner, or by any rule or regulation adopted
31 and promulgated by the Commissioner, shall have the right to file a complaint
32 with the Commissioner and to have a hearing thereon before the Commissioner.
33 Pending such hearing and the decision thereon, the Commissioner may suspend or

1 postpone the effective date of such action, rule or regulation.

2 (b) All hearings provided for in this Act shall be conducted, and the decision of
3 the Commissioner on the issue or filing involved shall be rendered, in accordance
4 with the provisions of (here insert by reference the applicable laws of the state
5 relating to such hearings).

6 Section 154 *Existing Filings and Hearings Continued:*

7 All title insurance manuals of classifications, rules and rates, rating plans and
8 modifications thereof filed under any repealed act shall be deemed to have been
9 filed under this Act, and all title insurance rating organizations licensed under such
10 repealed act shall be deemed to have been licensed under this Act. All hearings and
11 investigations pending under such repealed act shall be deemed to have been ini-
12 tiated under and shall be continued under this Act.

13 L. *POLICY FORMS*

14 Section 155 *Forms of Policies and Other Contracts of Title Insurance:*

15 Every title insurance company shall file with the Commissioner all forms of title
16 policies and other contracts of title insurance which it proposes to issue in this
17 state before the same shall be issued. Any such filing may be made by a title insur-
18 ance rating organization in behalf of all of its members or subscribers. In no event
19 shall any title insurance company issue any such form of policy or contract until
20 thirty (30) days after it shall have been filed with the Commissioner unless it shall
21 have received earlier approval by the Commissioner. Unless the Commissioner
22 shall disapprove a form of title policy or contract of title insurance within thirty
23 (30) days from the date of its filing, such filing shall be deemed to have been
24 approved.

25 Forms of title policies and other contracts of insurance, as used in this Sec-
26 tion, shall be deemed to include preliminary reports of title, binders for insurance,
27 commitments to insure and policies of insurance or guaranty, together with all the
28 terms and conditions of insurance coverage or guaranty that relate to title to any
29 interest in property and which shall be offered by a title insurance company. They
30 shall, however, specifically exclude (1) reinsurance contracts or agreements, (2)
31 all specific defects in title that may be ascertained from an examination of the risk
32 and excepted in such reports, binder, commitments or policies, together with any
33 affirmative assurances of the title insurance company with respect to such defects

1 whether given by endorsement or otherwise, and (3) such further exceptions from
 2 coverage by reason of limitations upon the examination of the risk imposed by an
 3 applicant for insurance or through failure of an applicant for insurance to provide
 4 the data requisite to a judgment of insurability.

5 M. *ESCROW, SETTLEMENT AND CLOSING CHARGES*

6 Section 156 *Filing Required:*

7 (a) Every title insurance company shall file with the Commissioner a schedule of
 8 the escrow, settlement and closing charges which it proposes to use in this state for
 9 such services when performed in connection with the issuance of policies of title
 10 insurance. The filing shall state the effective date thereof, which shall be not less
 11 than thirty (30) days after the date of filing with the Commissioner.

12 (b) All or any part of any such schedule may be changed or amended at any time
 13 or from time to time. Each change or amendment shall be filed with the Commis-
 14 sioner, and shall state the effective date thereof, which shall be not less than thirty
 15 (30) days after the date of filing with the Commissioner.

16 (c) So long as they are effective, copies of such schedules shall be retained in each
 17 of the offices of the title insurance company in this state, and, upon request shall
 18 be furnished to the public.

19 (d) No title insurance company shall make or impose any charge for escrow, settle-
 20 ment or closing services when performed in connection with the issuance of a
 21 policy of title insurance except in accordance with the schedule of such charges
 22 filed with the Commissioner as required by this Section.

23 N. *OTHER PROVISIONS*

24 Section 157 *Open Section*

25 Section 158 *Open Section*

26 Section 159 *Open Section*

27 Section 160 *Disclosure - Mortgagee Policies:*

28 (a) Any title insurance company and any title insurance agent issuing mortgagee's
 29 title insurance upon a loan made simultaneously with the purchase of all or a
 30 part of the real estate securing such loan, where no owner's title insurance policy
 31 has been ordered, shall, prior to the disbursement of the loan funds or the issuance
 32 of the mortgagee's title policy, cause the mortgagor to be advised in writing that a
 33 mortgagee's title insurance policy is to be issued, that such policy does not afford

title insurance protection to the mortgagor, and of the mortgagor's right to obtain owner's title insurance for his protection. Should the mortgagor elect not to purchase owner's title insurance, the title insurance company or the title insurance agent shall obtain from said mortgagor a statement in writing that such notice has been received, and that he waives his right to purchase owner's title insurance. Such statement, or a durable copy thereof, shall be retained by the title insurance company or the title insurance agent taking same for a period of not less than five (5) years.

(b) The form of the written notice and waiver shall be in a form substantially as follows:

NOTICE AND WAIVER

RE: _____

(Address or Brief Property Description)

Pursuant to Section 160 (one hundred sixty) of the Title Insurance Act of this State notice is hereby given that a mortgagee's title insurance policy is to be issued to your mortgage lender. Such policy does not afford title insurance protection to you in the event of a defect or claim of defect in title to the real estate which you are acquiring. An owner's title insurance policy affording title insurance protection to you in the amount of your purchase price (or for the amount of your purchase price plus the cost of any improvements which you anticipate making, may be purchased by you.

Said Section 160 (one hundred sixty) requires that you sign the statement below if you do not wish to purchase an owner's title insurance policy.

Name of Company Issuing Policy

This is to certify that we have received the foregoing notice and waive our right to purchase an owner's title insurance policy for our protection. We acknowledge that (*insert name of Company*) shall have no responsibility to us for the status of the title to the real estate which we are acquiring.

Signature of Mortgagors

Section 161 Other Sections Applicable:

In addition to the provisions of this Act, present laws governing insurance companies, except as they are inconsistent with the provisions of this Act, shall apply to the business of title insurance and to title insurance companies, and no law

1 hereafter enacted shall apply to title insurance companies, title insurance agents,
2 title insurance rating organizations or the business of title insurance unless it
3 specifically states that it is intended to be so applicable.

4 Section 162 *Repealer:*

5 All laws and parts of laws in conflict with the provisions of this Act are hereby
6 repealed insofar as they may be or have been applicable to the business of title
7 insurance, title insurance companies, title insurance agents, or title insurance rating
8 organizations, and, in case conflict should develop, the provisions of this Act shall
9 control and be effective.

10 Section 163 *Effect of this Act:*

11 The repeal by this Act of any provision of law shall not revive any law heretofore
12 repealed or superseded, nor shall this Act affect any act done, liability incurred,
13 or any right accrued or established, or any suit or prosecution, civil or criminal,
14 pending or to be instituted to enforce any right or penalty or punish any offense
15 under the authority of the repealed laws.

16 Section 164 *Effective Date:*

17 The provisions of this Act shall take effect (here insert the date on which it is
18 determined that the Act shall become effective).

The CHAIRMAN. The next witness is Prof. John C. Payne, adviser, special committee on residential real estate transactions of the American Bar Association.

Come around Mr. Payne. Very good to see you and have you here.

And I might announce that he is from the University of Alabama and devotes his time to just such problems as we are wrestling with.

We are very glad to have you, sir.

**STATEMENT OF JOHN C. PAYNE, ADVISER, SPECIAL COMMITTEE
ON RESIDENTIAL REAL ESTATE TRANSACTIONS OF THE AMERICAN BAR ASSOCIATION**

Mr. PAYNE. I have been asked to represent the special committee on residential real estate transactions of the American Bar Association, the request coming from Mr. William B. Spann, the chairman of the committee. He had a prior commitment which he could not repudiate on short notice.

The special committee had, until 10 days ago, been led to believe the question of closing costs would not be considered in connection with the now pending Housing Act. In the interim, several proposals dealing with closing costs have been introduced in the Senate or the House or have been the subject of rumor.

The situation is so fluid, I am not positive what is before the subcommittee at this time, but presume we are concerned with the so-called Brock bill, S. 2228.

The special committee which I represent has not had an opportunity to meet or to formulate a position paper on the specific provisions of any pending proposal dealing with closing costs. However, the central issue with which the special committee is concerned for the moment is whether the Federal Government should undertake to set maximum legal fees for establishing land titles in connection with the purchase and sale of homes.

Although approving consumer protection measures such as the elimination of "kickbacks," the board of governors of the American Bar Association has previously gone on record as opposing this form of price fixing. The special committee has scheduled a meeting for Saturday of this week. At that time, it will undertake to draft a formal expression of views extrapolating and explaining the action taken by the board of governors.

It requests permission from the subcommittee to file a statement after the Saturday meeting with the understanding that the statement will be incorporated into the record of these hearings as though it were herewith submitted.

The CHAIRMAN. Let me ask you in that connection, you say you would like to have the commission to file the statement after the Saturday meeting. That is this Saturday?

Mr. PAYNE. This coming Saturday, yes.

The CHAIRMAN. How long after that would it be we would receive this statement? I ask this purely for this purpose: Naturally, when we complete our hearing, we like to get the record into shape reasonably as soon as we can for printing purposes. How long would it take, do you think, to get the statement in?

Mr. PAYNE. Senator, that is a matter on which I would not like to make a definite commitment. I have not met with the committee before. I have prepared a draft of a statement. It depends upon how cantankerous and obdurate they are.

If the statement is to be completely rewritten, it may take a longer time than if they go ahead and adopt it as is. I can simply say that every effort will be made to get a statement into this subcommittee as quickly as humanly possible.

The CHAIRMAN. If you find those fellows cantankerous, you tell them we need that statement as soon as we can get it. Maybe that will move them along a little.

Mr. PAYNE. I will use your influence to move them along.

The CHAIRMAN. We will be very glad to hold the record open for a reasonable time to receive the statement.

Mr. PAYNE. Thank you, Senator.

[The statement follows:]

Statement of the Special Committee on Residential Real Estate Transactions of the American Bar Association, submitted to the Subcommittee on Housing and Urban Affairs, of the Committee on Banking, Housing and Urban Affairs, United States Senate. July 30, 1973.

The American Bar Association is highly concerned with the question how closing costs attendant upon the sale and mortgage of homes can be reduced to a minimum. To this end it has appointed its Special Committee on Residential Real Estate Transactions. The Special Committee is now engaged in the preparation of an extended position paper dealing with the role and method of compensation of lawyers where the sale or mortgaging of a home is being consummated. The preparation and formal approval of any such position paper, as the official views of the organized bar on a matter of importance, will take weeks or months. However, the Special Committee will attempt to complete its work at the earliest moment possible and transmit the result to the Congress. It had been earlier advised that the Senate Subcommittee on Housing and Urban Affairs would not consider the question of closing costs at this session of Congress. This misunderstanding accounts for its inability to present a completed and approved position paper on short notice. The Special Committee would stress to the Congress that the attitude of the organized bar is affirmative, rather than negative. However, the question to be dealt with is inherently complex and the water has been badly muddied in the past by hastily expressed over-simplifications. The Special Committee will seek to clarify rather than add further to the existing confusion.

At the moment the only specific measure before the Subcommittee on Housing and Urban Affairs is S. 2228 (the so-called "Brock Bill"). The Special Committee supports in general the provisions of the bill although they feel it should be broadened to increase protection for home buyers. One member feels that without such additional provisions S. 2228 should not be enacted.

As to specific provisions of the bill, Sections 101, 102 and 103 are unobjectionable. The Special Committee as a whole does not oppose the enactment of Section 104. However, it expresses the opinion that this section should, if possible,

be either expanded or made the part of a more comprehensive bill giving added protection to the buyer. The buyer should be alerted at the earliest possible moment to the existence and amount of closing costs. If this is not done he may be trapped into a more expensive bargain than he intended and may be highly embarrassed in his efforts to meet demands made upon him at the time of closing.

Section 105, prohibiting kickbacks and unearned fees, conforms to expressions of policy heretofore officially adopted by the Board of Governors of the Association.

Sections 106 and 107 are also unobjectionable.

The primary purpose of the Special Committee is to endorse Section 108, which provides for the repeal of Section 701 of the Emergency Home Finance Act of 1970. Section 701 authorizes the Secretary of Housing and Urban Development and the Administrator of Veterans' Affairs, with respect to HUD insured and VA guaranteed housing loans, ". . . to prescribe standards governing the amount of settlement costs allowable in connection with the financing of such housing in any . . . geographic area. Such standards shall . . . be based on the Secretary's and the Administrator's estimates of the reasonable charge for necessary services involved in settlements for particular classes of mortgages and loans." The Secretary and the Administrator have taken the position that this language authorizes them to establish cost ceilings. In conformity with their own construction they have published tentative schedules of maximum closing costs applicable to six metropolitan areas. These proposals have not yet been implemented. It is not certain at this time whether they will be put into effect or whether the Secretary and the Administrator will attempt to exercise their claimed authority elsewhere throughout the country. The Association has consistently asserted that the construction given Section 701 by the Secretary and the Administrator is unwarranted and that the authority to establish standards does not extend to the fixing of maximum charges. Without reference to whether the Association is correct or incorrect in the position it has taken, any provision for the regulation of legal fees charged in connection with the closing of land sales or mortgage transactions is unwise. It follows that the Special Committee urges the adoption of Section 108, or of a similar provision contained in any other bill now before the Congress, and opposes the continuation or extension of the

power now vested in the Secretary of HUD and the Administrator of the VA to regulate closing costs. In making this submission the Special Committee is reaffirming the position taken by the Association during the course of prior hearings on the Housing and Urban Development Act of 1972 (S. 3248) before this Subcommittee, and before the Subcommittee on Housing of the Committee on Banking and Currency of the House of Representatives when S. 3248 and the parallel H.R. 13337 and H.R. 15704 were under consideration in 1972.

In presenting this submission the Special Committee should make it clear at the outset that, although the organized bar is in principle committed to the reduction of all charges imposed on sellers, buyers and mortgagors of homes, it will confine expressions of opinion to the question whether legal fees should be regulated. The indiscriminate use of the terms "closing costs" and "settlement costs" has produced a great deal of confusion and misunderstanding. Charges paid at or before closing (other than the selling price) can be categorized under at least five unrelated and distinct headings: (1) financing fees; (2) selling costs; (3) governmental exactions; (4) costs of ownership; and (5) legal fees. Despite its generalized sympathy with efforts to reduce the sum of the first four of these categories, the legal profession has no ability to control them and no special expertise qualifying it to make recommendations for action designed to secure their minimization. On the other hand, the bar does have peculiar knowledge about the problems to be met if legal fees are to be reduced. The Special Committee will therefore confine this statement to questions about which it is specially qualified to speak. It will make no effort to express an opinion whether charges for non-legal services are excessive or whether they should be the subject of control.

In support of the position that the federal government should not at this time attempt the regulation of legal fees charged for services in connection with title closings the Special Committee advances the following reasons:

(a) Our economy has been built upon the principle that, in the long run, maximum services and minimum costs can best be achieved by competition free from governmental intervention. Price regulation is justified only where impelling reasons are shown and the advantages to be gained outweigh potential adverse side effects. In the present instance, no such case has been made out. The publicity

given abuses in limited areas, notably the City of Washington and its environs, has created the impression that these abuses are the norm, rather than the exception. Up to now we do not have reliable data showing a national pattern of excessive legal costs. The Congress has the responsibility for legislating for the country as a whole. It is not charged with the duty to remedy merely local abuses. In any event, any system of regulation of legal fees would have deleterious side effects greatly outweighing the advantages to be gained. These side effects will be discussed in detail in subsection (d).

(b) Title practice varies greatly from one community to another, from one law office to another and from one transaction to another. Fees charged by lawyers depend not merely upon local custom but upon a large number of other factors, such as the amount of work required, the value of the property sold or mortgaged, the responsibility assumed, the volume of business received from a particular client and the method used in proving title. Title proof will entail varying amounts of labor. These variations in some cases are the result of differences in the complexities of particular chains of title. They also arise out of differences between the land law and recording statutes in the several states, the period of search conventionally relied upon in a particular community (which is itself the result of differences in both customs and positive laws concerning the duration of interests in land, the effects of statutes of limitations and the like), the practicality of employing local public land title records and the availability of information from private title plants. No standard procedures are employed. Even lawyers, acting locally, have been unsuccessful in standardizing charges. Although existing data is far from satisfactory, it shows wide variations in legal fees even within a single city. Under these circumstances there appears no possibility of establishing by federal action fee schedules which will be fair and equitable to all parties.

(c) An inherent danger in any system of price fixing is that maximum scales almost automatically become minimums. Admitting that legal fees may be excessive in some localities, in other areas they are below the level contemplated by federal officials. It is probable therefore, that the promulgation of fee schedules will result in increased overall cost to some persons dealing in land. Recent experience in

England fortifies this conclusion. In that country solicitors fees have traditionally been set by the government. In the face of strong public criticism, this system has been abandoned and solicitors are now free to price their services as they see fit. Sufficient time has not yet elapsed to permit an evaluation of the results of this experiment, but it is generally supposed that the cost of conveyancing will thereby be reduced.

(d) Attacks upon fees charged by lawyers put the cart before the horse. The first question is, what services are required? Only after this question has been answered can we determine the legitimacy of the cost of supplying such services. It is, of course, permissible to ask how the work can be done more efficiently and less expensively. But the point of departure is not the price but the product. It has repeatedly been pointed out that the home buyer is generally engaged in the largest single financial transaction of his life. He needs advice and protection such as can be provided only by an independent member of the bar. Lawyers are entitled to ask reasonable compensation for their work. It has generally been assumed outside the bar that legal fees are excessive. The impression inside the profession is to the contrary. Although a few specialists in isolated areas have realized large incomes from title practice, this form of work is generally regarded as being not very remunerative. An increasing number of lawyers are abandoning this area of professional endeavor and are seeking greener pastures. The present danger is not so much that home buyers will be overcharged as that they will not be able to obtain proper representation and protection. This danger will become acute if fees now charged are further reduced by arbitrary action on the part of the government. At this point the matter transcends the immediate interest of individual home buyers. Since 1932 the Congress has consistently sought to encourage the construction and purchase of homes. Originally it was thought that this objective could be attained by federal mortgage insurance. More recently it has become apparent that a national mortgage market must be established to stimulate the flow of funds from capital surplus to capital deficit areas. Congress

has reacted to these needs by the creation of the FHA, Fannie Mae, Freddie Mac and Ginnie Mae. This institutional structure has proved highly salutary. However, in establishing it the government has relied primarily upon private lenders for needed capital. These lenders have a choice. If they feel mortgages are a good investment they will place their money in the mortgage market. If they feel mortgages are a poor investment they will go elsewhere. One of the basic criteria in the minds of lenders, in determining where to channel their funds, is the degree of security they are afforded. Investors in mortgages demand complete security of title. This assurance is furnished by lawyers. If legal fees are reduced to such a level that attorneys are no longer willing to supply adequate protection the entire mortgage market will be disrupted. Any such disruption will not only have serious effects upon the whole national economy but will deprive individuals of the credit they require to finance the purchase of homes. For this reason, any ill considered tinkering with legal fees may be counterproductive and inconsistent with larger objectives of the Congress. In another field, the country has just seen how governmental intervention, no matter how well intended, can produce disastrous results. The untimely regulation of food prices has resulted in farmers withdrawing from production. The consequent decline in supplies of food, with increases in prices, has caused the government to beat a hasty retreat. A similar fiasco in the mortgage market could have equally as serious results.

It has been assumed that lawyers are battenning on the public. The Special Committee suggests that this assumption is incorrect. Lawyers as a whole are not being overly compensated. The public does not understand that the reason for high charges is the antiquated system under which the lawyers are compelled to operate. The lawyer is paid primarily for his time. The existing law makes title work highly time consuming. The path to lower costs, therefore, lies through reform of the land law and the recording acts. It is unrealistic to ask the lawyer to reduce his charges until he is given tools with which he can work efficiently. While the Congress can recommend needed statutes to state legislatures, the latter alone can

carry out most of the needed reforms. If, pending action at the state level, the Congress becomes impatient and arbitrarily and unrealistically reduces legal fees, it will be acting irresponsibly and against the public interest. It will be dealing with symptoms, rather than causes, and is more likely to kill than cure the patient.

(e) Any system of control of legal fees will require enforcement by an enlarged bureaucracy. The result will be added expense and increased rigidity of procedures. Our objective is to increase efficiency and reduce expense. Bureaucratic control will defeat both these objectives.

In Summary, the Special Committee supports the adoption S. 2228 in general and specifically urges upon the Congress the desirability of the enactment of Section 108 of this bill.

The CHAIRMAN. Go right ahead, sir.

Mr. PAYNE. Although I am not authorized to speak further for the special committee until it has taken official action, I think I am safe in stating on the basis of resolutions already adopted by the board of governors that the American Bar Association supports section 108 of S. 2228, which will repeal section 701 of the Emergency Home Finance Act of 1970.

Section 701 has been interpreted to give the Secretary of Housing and Urban Development and the Administrator of Veterans' Affairs authority to fix maximum closing costs in transactions where the FHA or the VA insures payment of a mortgage loan.

As I have already said, the reasons for the position taken by the board of governors will be explained in detail in the statement to be filed hereafter.

I think I am also safe in saying that the American Bar Association's position is affirmative rather than negative. The association favors the reduction of closing costs, but its primary concern is that proper services be rendered home buyers and mortgagees.

Home buyers and mortgagees have a legitimate need for certain services. Before you can price these services, you must determine what they are. With this principle in mind, the special committee is now attempting to draft a statement dealing with the proper role of lawyers in title transactions and the basis for establishing a fair and adequate system of compensation. When this work is completed, the special committee will be glad to transmit its findings to Congress.

The limited authority vested in me today prevents me from making any further statement on behalf of the special committee. But I will be delighted to answer any questions posed by members of the subcommittee. However, anything I say in response to questions will have to be taken as expressions of my private views and will not necessarily put on record a formal position of the American Bar Association.

The CHAIRMAN. Thank you very much. I think you have made a very clear statement.

Senator Williams?

Senator WILLIAMS. No, thank you.

The CHAIRMAN. We will be watching with interest the work of the special committee.

Mr. PAYNE. Thank you, Senator Sparkman.

The CHAIRMAN. Thank you very much.

May I say I have had correspondence with Mr. Payne at different times. I want you to know, sir, we shall welcome any suggestions you have at any time.

Mr. PAYNE. Thank you.

The CHAIRMAN. Senator Brock has some remarks relative to S. 2228. Please go ahead Senator.

STATEMENT OF BILL BROCK, U.S. SENATOR FROM THE STATE OF TENNESSEE

Senator BROCK. Mr. Chairman, I appreciate the opportunity to comment on S. 2228 which I introduced to protect the home buyer from unfair closing cost practices.

During the past few years public attention has been focused on the problems faced by the typical home buyer. A great many people will

buy a home only once in their lives. For them, and for all persons buying for the first time, it can be a mystifying experience.

The first step is relatively simple and enjoyable. A good natured real estate broker takes Mr. and Mrs. Home Buyer around to see a number of houses and explains the asking price.

There is a meeting of the minds on a house and a price. Terms of financing are discussed. A contract is signed. The contract usually contains a full description of the property, the purchase price, conditions of financing and the time and place of closing.

This starts into motion a series of events little understood by Mr. and Mrs. Home Buyer. There is a title search, a survey, an inspection, the arranging of financing, and the preparation of the deed and other documents necessary for the transfer of title and possession to the property.

At the closing Mr. and Mrs. Home Buyer are confronted with a number of mystifying documents usually including:

- (1) Seller's and purchaser's copy of the contract of sale.
- (2) The latest tax, water, and assessment receipted bills.
- (3) Latest meter readings of utilities.
- (4) Receipts for last payment of interest on present mortgage.
- (5) Certificates of fire, liability and other insurance on the property.
- (6) Estoppel certificates of necessity.
- (7) Subordination agreements if necessary.
- (8) Satisfaction pieces of mechanics liens, chattel mortgages, and so forth.
- (9) Affidavit or report of title.
- (10) Authority to execute deed if seller is acting through an agent.
- (11) Bill of sale for personal property.
- (12) Seller's last deed.
- (13) Any unrecorded instruments affecting title.
- (14) Deed to be delivered to buyer.
- (15) Mortgage and accompanying instruments.
- (16) Survey results.
- (17) Closing statement.

The shocker comes when the home buyer finds that in addition to the brokers fees and finance charges he is obligated to pay for such additional items as title examination fees, title insurance, attorney fees, survey fees, document preparation fees, closing fees, escrow fees, recording fees, transfer taxes and prepaid expenses. Quite understandably the home buyer is shaken up by this experience.

The importance, in financing and other terms of the home purchase, and the inevitable inexperience of the individual home buyer, adds up to a special need for the protection of the buyer.

Two approaches have been suggested to this problem. One would have the Federal Government impose limits on the charges that may be imposed for services provided in real estate settlements. The weakness in this approach is that it merely treats the symptoms of the problem and does not go to the underlying causes. Where abusive practices are common or costs are escalated by inefficient title systems, these problems should be dealt with directly. We should have learned from the recent price-control experience that in the nonutility area Federal rate regulation is ineffective and often counterproductive.

As an alternative, I introduced S. 2228 to have the Federal Government supplement State and local efforts to deal directly with the underlying abuses. The thrust of my bill is to clarify the confusion by providing the home buyer with the information he needs in order to have a clear picture of what his settlement costs will be. In addition, anticompetitive practices will be outlawed. Thus, the informed consumer will be able to exert market pressure to bring down settlement costs.

My bill has four basic provisions which, if enacted, would:

Direct HUD to distribute information and booklets explaining borrowing and closing procedures;

Establish a national uniform statement of settlement costs;

Require advanced disclosure of settlement costs; and

Prohibit kickbacks and unearned fees.

This is a balanced approach to the problem of settlement costs which will protect the consumer without putting out of business the many small individual firms that supply needed services. I urge the subcommittee's prompt consideration of this much needed legislation.

Thank you, Mr. Chairman.

[Senator Brock requested the following letter be included in the record:]

SOUTHERN MANUFACTURED HOUSING INSTITUTE, INC.,
Atlanta, Ga., July 23, 1973.

Hon. WILLIAM BROCK,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BROCK: As hearings are being held this week before the Senate Committee on Banking, Housing, and Urban Affairs on S.B. 1348 (Safety Standards for Mobile Homes), I want to again assure you of our full support and cooperation in behalf of this proposed legislation. Mr. John Martin, president of our national organization, the Mobile Homes Manufacturers Association, will speak with authority for the Southeastern Manufactured Housing Institute at these hearings.

As you know, the Southeastern Manufactured Housing Institute has successfully fostered and supported the enactment of state legislation providing that all mobile homes be constructed according to specific, nationally recognized standards known as ANSI 119.1. This same standard, through our sponsorship has been incorporated into the Southern Standards Building Code adopted by the Southern Building Code Congress and is not a standard developed by our industry alone.

In order that our industry may continue to meet its part of America's low-cost housing challenge, we urge that our Congress recognize this industry's dire need for *uniform laws and uniform inspection procedures* throughout all of our individual states. We further believe that S.B. 1348, of all the proposed mobile home legislation, best attempts to do this. May we, however, emphasize that any Federal regulation mandated by Congress include the following minimal requisites:

(1) A single Federal standard (A119.1, as hereafter revised) from which no state may deviate.

(2) Rigid enforcement, at the state level, of A119.1 (as hereafter revised), and at the Federal level where no state program exists.

(3) Reciprocity among the various states to insure the shipment of homes manufactured in one state to another.

Our organization, as the regional trade association in the Southeast representing 37% of the national volume, appreciates the opportunity to convey our thoughts at this time for the record.

Sincerely,

JOHN B. MANLEY, Jr.,
President.

The CHAIRMAN. Now, we have Mr. Robert E. Herndon, Jr., executive director and treasurer, American Congress on Surveying and Mapping.

We are glad to have you with us, Mr. Herndon.

And for the benefit of the reporter, please identify the two gentlemen accompanying you.

**STATEMENT OF ROBERT E. HERNDON, JR., EXECUTIVE DIRECTOR
OF THE AMERICAN CONGRESS ON SURVEYING AND MAPPING;
ACCOMPANIED BY RODNEY HANSON, PRESIDENT, MARYLAND
SOCIETY OF SURVEYORS AND ROBERT KIM, MEMBER, VIRGINIA
ASSOCIATION OF SURVEYORS**

Mr. HERNDON. Mr. Chairman, my name is Robert E. Herndon, Jr., and I am the executive director of the American Congress on Surveying and Mapping for which I will now use the acronym ACSM.

I have with me two practicing land surveyors from our adjoining States of Maryland and Virginia. On my right is Mr. Rodney Hanson who is president of the Maryland Society of Surveyors.

On my left is Mr. Robert Kim, a member of the Virginia Association of Surveyors and who is their liaison member to the ACSM.

Senator, I express appreciation both for myself and, of course, for the officers and organizations for the opportunity to appear and state our position today. And recognizing the statement of your intent to publish the statements submitted to your staff, and your request for brevity, I prefer to summarize in 4 or 5 minutes our position on several points.

The ACSM is a nonprofit professional society for individual members who are surveyors, cartographers, and geodesists. About 20 percent of the surveyors in the United States are members of our national organization or its affiliates. The States register and regulate professional surveyors through their registration boards. There is no national registration.

With regard to our first point, the HUD on July 4, 1972, announced an intent to set maximum fees for home-loan settlement costs. Surveying costs were included in this arrangement, but the surveying services that are expected were not clearly defined.

The surveying service involved is principally for the mortgagee, or the title or loan insurers, who must determine the extent and degree of precision of survey which each requires to assure that the property and the structures are as defined by the mortgage and are without encroachments or conditions that might affect the loan or the mortgagee's liability.

We believe an inspection rather than a precise survey might suffice. ACSM in its function as a professional society has published standards for various types of surveys and has developed one for a mortgage loan inspection. It was furnished to HUD with an offer of assistance in defining HUD's survey needs. It is recommended that the requirements for information or assurance, from surveyors, to support the U.S. Government mortgage loan functions be more clearly defined and that the mortgage loan inspection be considered as a means of obtaining adequate assurance regarding property and house locations.

As indicated by the remarks of Senator Sparkman and Senator Williams in the preceding testimony, they apparently recognize some of the conditions that affect the costs and nature of surveys. Whether a survey or inspection is needed, the conditions pertaining to the property are not standard. Survey costs relate to the quality and the availability of records, the proximity of the point of origin for the survey or inspection, the distance to and the accessibility of the property and evidence or condition of the boundary and, finally, the nature of the end product that is requested of the surveyor, whether it be maps or certificates or marking or some other forms of services.

These factors vary widely within any metropolitan or suburban or rural area. While there may be a number of similar cases, there are many more cases which vary to extremes in the amount of time and effort which must be applied.

We recommend that the proposal to impose standard maximum fees for survey support services through Federal regulation of the settlement costs be rejected.

Mr. Chairman, we are available for questions which you may have with regard to the position which we have taken.

The CHAIRMAN. Thank you very much.

I just remarked that Senator Williams left a little too early. You heard his remarks a few minutes ago.

Mr. HERNDON. We could have gotten him involved in the discussion of metes and bound.

The CHAIRMAN. The old gum tree, the old oak stump, et cetera.

You have given a very interesting discussion, and I know he would have been interested in it. We are all interested in it, and we thank you for it.

Let me ask you, are we making significant progress in getting our land records in shape throughout the country?

Mr. HERNDON. It is a subject that is being studied, and we are participating in those studies. I think there was a reference in the preceding testimony to hearings under the American Bar Foundation, American Bar Association, and a number of the realty organizations and in our case the surveyors' organizations, and the county and State organizations, to try to reach agreement with regard to how such records can be mechanized and more readily and more faithfully produced for rapid identification and use, by people in the settlement business.

The CHAIRMAN. I may say this, as a young lawyer, I did a lot of work in searching titles and examining titles, and so forth. Fortunately, in the county in which I was practicing, we had a very fine set of records. I have been in other counties where searching was really a time-consuming effort, a consuming task. And I know some of the difference that comes between the two systems.

And I have felt, and certainly I have hoped, that throughout the country, the counties as a whole were modernizing their records.

Mr. HERNDON. Sir, I am afraid that the great variety of conditions and the great variety of procedures for recording make the realization of a standardized system of any type a very tedious task.

Further, there are basic differences of opinion that must first be resolved. In an automated system, does the recall system depend upon a location given in coordinates related to some standard datum for the country or should they be related to the names of the previous owners

of the property? There is a great deal of honest difference of opinion which system should be used. And those are only two.

There has been a very good series of meetings. I am certain that it has not progressed nearly rapidly enough. I am certain that a great deal more attention by both Government and in the societies and representative organizations that deal in these matters, is necessary for any early resolution of even the procedure by which the recording and recall will be accomplished.

The CHAIRMAN. Senator Brock.

Senator BROCK. I was interested in the chairman's question. I think we all feel we have reached such a state of technology where everything ought to be on a computer these days. But it is not quite so, particularly with regard to land boundaries, definitions, and titles and so forth.

And the chairman probably will recall in the State of Georgia the last couple of years, they tried to acquire its third Senator by taking over a couple of miles of the State of Tennessee.

I did not know whether Senator Talmadge needed all that help or not down there in Georgia, but it is a rather complicated and complex area. And that is why I think it is asking the impossible for us to try to establish a set fee for the conditions of ever higher topography. All of these things can create enormous complexity.

And it is my premise with the legislation I have introduced—and I gather that in essence you would agree with some of it if not all—that we do more service to the consumer, to the homeowner, by giving him full disclosure, letting him know what exactly is involved in the purchase of a home than we do by establishing perhaps some fee that may be adequate in some area, but not in others. There is the problem of services which are absolutely essential to making a judgment about that home.

That is the premise on which I have been operating.

I was fascinated, Mr. Herndon, with the fact that you have this figure in here of 43,000 registered land surveyors in the United States. That is an incredible number of people.

Mr. HERNDON. Yes, sir. That figure is generated by the National Council of Engineering Examiners. It is based on the number of registrants in each State. It is divided between those holding both professional engineering and land surveying registrations and those who are registered as land surveyors only.

Senator BROCK. It is not exactly what you call big business. He is a small businessman.

Mr. HERNDON. Most of them are. And we hope that the industrial census of this past year, which we should begin to receive soon, will give us a better understanding of how many of those 43,000 are actually practicing and how many of them are in which level of business—1, 2 or 3 surveyor-size organizations.

Senator BROCK. I gather about 25 percent of those are participants in your organization.

Mr. HERNDON. My best computation, and these vary, of course, is about 23 percent either in our national organization or in our affiliated organizations of which there are 45 in 45 States.

Senator BROCK. Mr. Chairman, I have no questions. I would like to thank these witnesses for a very specific and fine statement. I was in Tennessee last night, and I got back a little late and missed the testimony of Mr. Sudbrack and Mr. Schmidt and Professor Payne. But I am very grateful for the direct endorsement of what we are trying to do in their statements. They made a contribution.

And I thank you gentlemen for coming today.

Mr. HERNDON. Thank you.

The CHAIRMAN. We had, I will state it to Senator Brock, some very fine and interesting testimony today. And I recommend the reading of the record.

And I shall call to the attention of the Senator from New Jersey your statement that came just as he had to go out of the room which clears up all of this about that old gum tree or that old oak stump.

Senator WILLIAMS. I will read this with a great deal of interest. I am sorry I missed your comments on some of the things we mentioned earlier.

The CHAIRMAN. Thank you very much, gentlemen.

Mr. HERNDON. Thank you very much, gentlemen.

[The statement follows:]

PREPARED STATEMENT OF
 ROBERT E. HERNDON, JR., EXECUTIVE DIRECTOR,
 OF THE AMERICAN CONGRESS ON SURVEYING AND MAPPING,

Mr. Chairman, my name is Robert E. Herndon, Jr., and I am the Executive Director of the American Congress on Surveying and Mapping. With me are practicing surveyors who own and operate surveying companies and who also hold positions in the organizations of professional land surveyors in our adjoining states of Maryland and Virginia. Mr. Rodney Hanson is President of the Maryland Society of Surveyors. Mr. Robert Kim is a member of the Virginia Association of Surveyors.

I appreciate the opportunity to express the views of our organization on problems which involve our members, home owners, and the State and Federal Governments. ACSM is a national society having approximately 6000 members, of which about two thirds are land surveyors. The remaining members are in allied professional disciplines, including control surveying, geodesy, and cartography.

ACSM is a professional society comprised of individual members. It is the principal representative organization for land surveyors and cartographers of the United States and provides U.S. representation to international surveying and cartographic organizations. It has 44 affiliated state land surveyor organizations, plus 26 local Sections of ACSM, and these provide the action groups in 45 states. The membership of the affiliated organizations is about 10,000, or more than 20% of the total registered land surveyors in the United States.

The primary objective of the organization is to "advance the sciences of surveying and mapping - - - in furtherance of the public welfare and in the interests of both those who use maps and surveys and those who make them - - -." Our presence here today is in support of both the user and the maker.

Surveying in this country began with the granting of lands by powers in Europe, and has continuously been a respected profession, bearing responsibility

to the public. Presidents Washington, Jefferson, and Lincoln were practicing surveyors in addition to their public responsibilities and activities in other fields. The names of surveyors such as Mason and Dixon, Lewis and Clark, and many others are listed among those prominent in the history of the development of our country.

Today, the individual States have responsibilities and prerogatives for the examination, registration, and regulation of land surveyors. There is no national registration, but Federal Government geodesists and surveyors provide the basic, high-accuracy surveys for global and international correlation, and for establishment and maintenance of reference control points across the entire country.

The purpose of our statement is to express opposition to formal proposals by the Department of Housing and Urban Development that standard maximum fees be established for survey services related to mortgage loans which are insured by the Federal Government.

BACKGROUND

The Department of Housing and Urban Development, on 4 July 1972, announced an intent to establish rules to limit the amounts which would be paid for certain services in connection with HUD insured mortgage transactions. Submitted as an enclosure to this statement is a set of the materials furnished by ACSM on 31 July 1972 in response to the HUD invitation to provide written comments concerning the proposed rule making.

The prepared statement made to the Sub-Committee today by the American Land Title Association includes a thorough coverage of the legislative and administrative background of the HUD action. Duplication of coverage of those subjects has been avoided. Accordingly, this ACSM Statement is limited to a summary of key points pertaining to the services provided by the land surveyor, the deficiencies of the HUD proposal, and recommendations.

SERVICES PROVIDED BY LAND SURVEYORS

Standard dictionaries give two definitions of survey which are pertinent to the subject of this statement. The first meaning is to examine closely or appraise with respect to condition, value, and (in this case) location. This implies an action by one who is knowledgeable and experienced in the subject.

The second meaning refers to the act of determining, by the principles of geometry and trigonometry, the exact measurements, contours, position, etc., of any part of the earth's surface. This implies the use of skills, equipment, control, and care to provide precise determinations of relative positions and boundaries.

This second definition applies to the survey requirements which are related to titles to land and property. With the transfer of ownership, the purchaser normally wants title to property for which there is clear definition of the location, boundaries, and corners. In 1946, the ACSM developed and issued "Technical Standards for Property Surveys," and these are still in active use today. They require the surveyor to acquire all necessary data, including deeds, maps, certificates of title, centerline and other boundary and easement location data. He must then plan and make the survey with prescribed accuracies. For example, the minimum accuracy for linear measurements must be 1 part in 10,000, and there are comparable requirements for accuracies for angles and for levels. The standard requires "monuments" to mark the property boundaries and a map to record the measurements and locations. The map or plat identifies the licensed surveyor responsible for the work, and normally is made a part of the public record regarding the property.

In 1962, the earlier standards were issued again but in different form. In an effort to establish standard terminology and practices for land title purposes, the ACSM, in conjunction with the American Title Association (now American Land Title Association), published "Minimum Standard Detail Requirements for

Land Title Surveys." This, too, is still in use. Precise surveys and the resulting plats and documentation are a normal part of the formal records of land ownership.

The general definition of the term "survey" as meaning a close examination or appraisal has application to a second form of services provided by the surveyor. The mortgagee, in offering to loan money for the purchase of a home (or the insurer of the loan or title), wants assurance that the property and structures exist as defined by the legal description of the mortgage, and that there are no encroachments or unusual conditions that might affect the loan or title policy or the mortgagee's liability. If the loan is made at the time of original transfer of property, and the construction of the home, the precise survey performed for land title purposes also meets the needs of the mortgagee, or title or loan insurer. However, if, within a few years, the home is sold again, the needs of the mortgagee, or the insurers of the loan or the title, can probably be met by an inspection made by a registered surveyor. This would not be a property or land title survey for the owner, but a professional opinion regarding the property, made by the surveyor who is experienced in measurements and boundaries, and furnished only to the mortgagee or title company. If, by inspection alone, the surveyor is unable to establish the property lines sufficiently to verify location, identify encroachments, etc., the surveyor's report would include a recommendation that a precise survey be made to provide the required degree of assurance.

Recognizing an erroneous and misleading use of the term "surveys," the ACSM, by a formal resolution which was approved and disseminated in 1969, condemned the use of the word "surveys" in connection with such mortgage loan inspections and recommended the use of the term "mortgagee's inspection."

THE HUD PROPOSALS

The proposed regulations as published by HUD on 4 July 1972 included a Settlement Cost Reporting Form on which a brief definition of the "Field Survey Charge" was given as follows:

"2. Field Survey Charge. A survey is the process by which a parcel of land is measured and its contents ascertained. It will usually include a legal description of the property's boundary lines, dimensions of the property, location of buildings, fences, and other improvements. Charges for this service must involve an actual measurement of the property made on the premises."

The definition is not clear enough to indicate whether or not a precise survey is required. Some of the requirements as expressed would necessitate either a survey, or a disclaimer with regard to specific accuracies, which would, in turn, reduce the requirements to a level at which they could be met by an inspection as mentioned previously.

Determination of the degree of assurance required from the surveyor is the prerogative of the client. If the precise locations of boundaries, corners, fence lines, structures, etc., are considered necessary for protection of the mortgagee, or loan or title insurer, a precise survey is needed. However, it is believed that inspections would provide adequate assurances in most cases.

In the response of 31 July 1972 to the HUD proposal, ACSM offered to work with HUD, as we have with non-governmental mortgage firms, in an effort to prepare descriptions of surveys or inspections, as appropriate, which would match the HUD requirements for information or assurance. There has been no response to the offer, nor any clarification of the HUD requirements.

Since 1969, ACSM has worked on the development of the terms for a standard Mortgage Loan Inspection and Certificate. Variations in the concepts and

requirements of the mortgagees, in State laws and practices, and in the development of urban areas across the country, have made the preparation of a standard a slow and tedious process. Language of a certificate for use by surveyors for mortgage loan inspections was furnished with the ACSM response to HUD. Work by ACSM has continued on the effort to standardize the meaning and use of the mortgage loan inspection as the procedure for meeting the needs of the mortgagee and title companies in most cases. Definitions are being improved, and the acceptance is increasing (within the non-government sector).

REJECTION OF PROPOSAL FOR STANDARD MAXIMUM FEES

Whether the work to be done must be a survey, or an inspection of lesser cost, there is no recognized, logical basis for a standard maximum fee for the service. The conditions pertaining to the properties to be surveyed or inspected are not standard. Costs are directly related to the age, availability, and quality of records; the distance to, and accessibility of, the property; the proximity of an appropriate "point of origin" for survey or inspection purposes; the size of the property and the evidence or condition of the boundary; the nature of the survey or inspection requirement and the related requirement for an end product map or plat, certification, marking or other forms of service. These factors vary widely within any metropolitan, suburban, or rural area. There is no more logic for arbitrary standardization of the fee for the surveyor's service than for a fixed fee for the architectural design for any form of structure, or for the engineering construction of any building, or for any type of medical treatment, or for spending the same amount of time on every piece of legislation. The principles are the same in each case. While there may be a number of similar cases, there are many more which vary to extremes in the amount of time and effort which must be applied.

In 1972, there were 43,000 registered land surveyors in the United States and Possessions. It is estimated that 75 to 80 percent are actively and primarily engaged in surveying. By virtue of registration and professional stature, they are dedicated to service in the best interest of the client and the public for an adequate fee based on applicable costs plus a fair compensation. They are controlled and regulated by State Boards and State laws. They pay operating costs, based on changing conditions, just as any other business of comparable size. To introduce Government regulation of charges without adjudging or controlling the variation in the extent of effort required or the cost of such efforts seems to be an unreasonable approach. The establishment of standard maximum fees for work that defies standardization of effort or cost would be illogical and inequitable, and not in the best interest of the public.

RECOMMENDATIONS

It is recommended that:

1. The requirements for information or assurance from surveyors to support the U.S. Government mortgage loan insurance functions be defined.
2. The acceptability of mortgage loan inspections as adequate assurance for Government purposes be examined by HUD, VA, and FHA, and
3. The proposal by HUD to impose standard maximum fees for survey support services through Federal regulation of the settlement costs be rejected.

Mr. Chairman, thank you for the opportunity to testify before the Subcommittee on a subject of interest and concern to the members of our organization.

AMERICAN CONGRESS ON SURVEYING AND MAPPING

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Member—National Research Council Earth SciencesMember—Federation Internationale des Geometres
(International Federation of Surveyors)
Member—International Cartographic Association

A.C.S.M.

DIVISIONS

Cartography
Control Surveys
Land Surveys

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Delaware Valley
Greater Rolla Area, Mo.
Gnam
Hawaii
Heart of America
Idaho
Jersey Shore
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July 31, 1972

Subject: (24 CFR Part 203)
Mutual Mortgage Insurance and Insured
Home Improvement Loans
Docket No. R-72-197
Maximum Charges, Fees or Discounts
Docket No. R-72-198
Proposed Maximum Settlement Charges

Gentlemen:

The publication of Proposed Rule Making by the Department of Housing and Urban Development in the Federal Register of 4 July 1972 has been reviewed.

The purpose of this letter and its enclosure is to express the views of the American Congress on Surveying and Mapping in opposition to parts of the subject proposals. The enclosure, "Summary of American Congress on Surveying and Mapping Position Regarding Referenced HUD Proposed Rule Making," provides background information and states opposition to parts of the proposed rules. The ACSM position relates to both of the referenced subjects and applies, in behalf of ACSM members and affiliates, to all geographical areas identified or implied by the language of the proposed rules.

Sincerely,

Edwin W. Miller, President

American Congress on Surveying and Mapping

March 1972—March 1973

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ACSM.

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SUMMARY OF AMERICAN CONGRESS ON SURVEYING AND MAPPING POSITION REGARDING REFERENCED HUD PROPOSED RULE MAKING

(Enclosure to ACSM letter dated July 31, 1972, to Rules Docket Clerk,
Office of General Counsel, Department of Housing and Urban Development)

Reference: (24 CFR, Part 203)

MUTUAL MORTGAGE INSURANCE AND INSURED HOME IMPROVEMENT LOANS
Docket No. R-72-197
Maximum Charges, Fees or Discounts
Docket No. R-72-198
Proposed Maximum Settlement Charges

The American Congress on Surveying and Mapping (ACSM) is a professional society composed of approximately 6000 individual members, of which about two-thirds are land surveyors. Forty-five state land surveyor organizations are affiliated with the ACSM, and have related objectives. Other allied professional disciplines, including control surveyors, geodesists, and cartographers, constitute the remaining portion of the ACSM membership.

The first statement of the objectives of ACSM is "to advance the sciences of surveying and mapping in their several branches in furtherance of the public welfare and in the interests of both those who use maps and surveys and those who make them * * * ." (See Attachment A for full text of the objectives and an ACSM organizational diagram.) To recognize the challenge of the first objective, one must first recognize that the examination and registration of land surveyors, the authorization to practice the profession, and the policing of their activities are exclusive prerogatives of the several states and that surveying practices are affected by state laws. There is no federal registration of land surveyors.

ACSM has dedicated extensive, long-term efforts to the national increase of standardization and quality of surveys in the interest of public welfare as a matter of professional responsibility. Examples of specific accomplishments include:

- Collaborative development of model laws for registration of surveyors by individual states.
- Establishment of technical standards for property surveys.
- Collaborative development of minimum standards for land title surveys.
- Development of model plat laws.

March 1972—March 1973

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"Technical Standards for Property Surveys" were developed and promulgated in June, 1946. (See Attachment B.) These standards have been incorporated into educational systems, into the standard practice manuals for surveyors, and into standards used in various state and local jurisdictions.

To meet the need for specific definition of surveys for land title purposes, the ACSM collaborated with the American Title Association (now American Land Title Association) to produce in 1962 "Minimum Standard Detail Requirements for Land Title Surveys." (See Attachment C.) With adjustments to fit state and local variations, this standard has become a basic document, guiding survey practice for land title purposes across the United States. It clearly defines the survey requirements, including accuracies for various urban and rural areas, the plat or map requirements, monumentation or staking, certification, and documentation which must be accomplished to meet land title requirements.

A comparable nationwide effort between 1960 and 1967 resulted in a model plat law which was offered as a guide for use in evaluating existing state laws and in the preparation of new or revised laws relating to the platting of subdivided lands. It specifies what is required for a plat, defines each action, and establishes minimums for accuracies, monumentation, mapping, and other related elements.

Mortgage loan inspections were addressed, as a special subject, by the ACSM Land Surveys Division and the ACSM Board of Direction in 1969, at which time a formal resolution was issued, condemning the use of the term "surveys" in connection with mortgage loan work. A full statement of the resolution is at Attachment D. At the same time, with a view toward establishment of a national standard, a committee was formed to review the broad scope of the problem and to propose an approach for correction. The committee has considered variations in the description of work required, language and definitions, and legal requirements. Based upon contributions from representative areas of the country, a definition for Mortgage Loan Inspections has been proposed, and a Certification Statement has been suggested for use by the registered land surveyor. Variations in application of both the definition and the certificate may be expected, due to the previously mentioned variations among the several states. However, it is an initial step toward clarification and specification of mortgage loan inspection requirements. The report of the committee which provides a definition for "Mortgage Loan Inspection," and a "Certification Statement," is at Attachment E.

The requirements of HUD for information regarding mortgaged properties are not adequately defined nor adequately expressed by the referenced proposed rules. The use of the term "survey" in the proposed revisions to 203.27, "Maximum charges, fees or discounts," could be interpreted to mean property surveys or land title surveys as discussed above or, alternatively, be interpreted as a much less thorough or accurate effort. Another term, "field survey," is used in the "Proposed Maximum Settlement Charges," but, again, is not defined adequately enough to permit an understanding of the government need for information. For example, the land title survey guide (See Attachment C) requires property corners to be established with errors no greater than .02 of a foot for certain classes of urban properties and .04 of a foot for other urban properties, with general closure accuracies of 1 part in 10,000. The guide presents three pages of guidance to fit the various requirements and conditions. By contrast, the measurements as required by the proposed definition could be accomplished by sighting, by pacing, by tape, or by electronic measurement systems since neither accuracy nor data requirements are described or defined. In summary on this point, it is suggested that an initial

action by HUD should be the development of answers to questions - Why is a "survey" or "inspection" required? What is its purpose? What use is to be made of it, by whom? What elements of information or data are required, and what accuracies are needed to meet the purposes and uses for HUD?

The "field survey" as defined in the referenced proposed rule requires a "legal description"--a term which is subject to various interpretations and applications in different parts of the country. For this reason, it, too, will require definition if it is to be widely applied.

It is recommended that the terms "survey" and "field survey" be deleted from the two referenced proposed rules. If it is determined that a land title survey is required to fulfill the HUD needs for mortgage insurance purposes, then the term "Land title survey" should be used and defined as per Attachment C. If, by contrast, a less precise inspection will meet government needs, it is recommended that the "Mortgage Loan Inspection" approach, as defined in Attachment D, be utilized.

If requested, ACSM will gladly participate with the HUD, as we have with members of non-governmental mortgage activities, in an effort to prepare descriptions of surveys or inspections, as appropriate, to properly match the HUD requirements for information for mortgage purposes.

The proposal to establish in the "Proposed Maximum Settlement Charges" fees for "field survey" in various Standard Metropolitan Statistical Areas (SMSA) is opposed. Aside from the lack of definition of the term "field survey" and of the nature and extent of work to be performed, the basic opposition is founded on logic and an understanding of the functions involved, regardless whether a "survey" or an "inspection" is required.

As a professional person, the surveyor is responsible and liable for his certified work. For this reason, his professional judgment must govern the extent to which the research of prior land surveys and titles must be accomplished to validate the accuracy of his work, or to indicate the existence of prior discrepancies which preclude a defined accuracy in positioning or description. Similarly, the time, effort, and cost of providing the survey or inspection service relate to:

1. Availability of pertinent records
2. Age and quality of records
3. Location of the property
 - Distance to site
 - Accessability
 - Proximity to appropriate "point of origin" for survey purposes
4. Size of property
5. Requirements of survey
6. Nature of end product map, plat, certification, marking, or other requirements

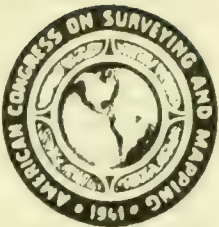
It is unlikely that any two surveys or inspections would cost exactly the same.

This is not an expression of challenge to the authority under the Emergency Home Finance Act of 1970 for the Secretary of the Department of Housing and Urban Development to establish fees such as are proposed. However, such an approach is considered to be ill-advised, and there is cause for concern with regard to the value to HUD of the service or product which would be provided for the proposed fees. Professional services dedicated to the public welfare and established maximum fees are inconsistent. The professional surveyor is dedicated to principles which dictate the provision of the best services to the client and to the public for an adequate fee based on applicable costs, plus a fair compensation. The establishment of a maximum fee for work that is inevitably variable in effort and costs is inequitable and is thus opposed. It is recommended that the concept of establishing maximum fees for work done by land surveyors be eliminated from the proposed rule.

Comments provided by this paper are intended to apply, as appropriate, to the definition of government requirements and opposition to fixed fees as they relate to mortgages on individual dwelling units insured under Sections 213(d) (Cooperative Housing) and 234 (Condominiums) of the National Housing Act.

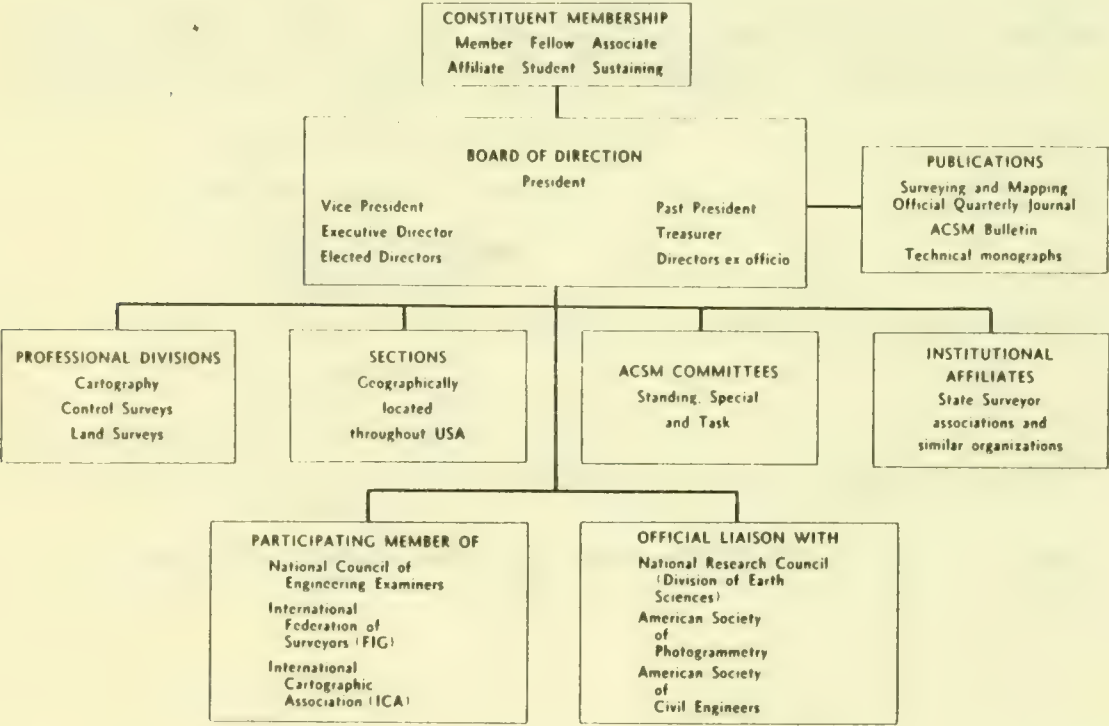
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ACSM

The objectives of ACSM are to: (a) advance the sciences of surveying and mapping in their several branches, in furtherance of the public welfare and in the interests of both those who use maps and surveys and those who make them, and establish a central source of reference and union for its members; (b) contribute to public education in the use of surveys, maps and charts and encourage the prosecution of basic surveying, mapping and charting programs; (c) encourage improvement of college curriculums for the teaching of all branches of surveying and mapping both in the technological sciences and the professional philosophies; (d) honor the leaders in the sciences of surveying and mapping; and (e) support a program of publications that will represent the professional and technical interests of surveying and mapping.



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Technical Standards for Property Surveys

EDITOR'S NOTE.—The following set of Technical Standards for Property Surveys was devised by the Technical Division on Property Surveys of the American Congress on Surveying and Mapping. It was submitted to the membership of the Congress and adopted in the published form at the Sixth Annual Meeting of the Congress on June 28, 1946.

I. LAND TITLES AND LOCATION

Every parcel of land whose boundaries are surveyed by a licensed surveyor should be made conformable with the record title boundaries of such land. The surveyor, prior to making such a survey, shall acquire all necessary data, including deeds, maps, certificates of title, centerline, and other boundary line locations in the vicinity. He shall compare and analyze all of the data obtained, and make the most nearly correct legal determination possible of the position of the boundaries of such parcel. He shall make a field survey, traversing and connecting all available monuments appropriate or necessary for the location, and co-ordinate the facts of such survey with the predetermined analysis. Not until then shall the monuments marking the corners of such parcel be set, and such monuments shall be set in accordance with the full and most satisfactory analysis obtainable.

Any descriptions written for conveyance or other purpose, defining land boundaries, shall be complete and accurate from a title standpoint, providing definite and unequivocal identification of the lines or boundaries, and definite recitals as to use or rights to be created through such descriptions. Any form of description, regardless of presence or absence of any or all dimensions, but specifically tying to adjoiners, which fulfills the foregoing conditions, is acceptable. However, such description, insofar as possible, in addition to all necessary ties to adjoiners, should contain sufficient data of dimension, determined from accurate field survey, to enable the description to be completely platted. It is also advisable wherever correct surveys have determined the coordinate values of boundary corners or monuments recited in a description, to make proper reference thereto in the description by any appropriate recital.

Any surveys made for purposes other than location of land boundaries need only the ordinary information and data necessary to fix the situs of the work to be done, by one or more ties to some known and accepted title boundary line or corner, together with such other data as may be required to tie the project into adjoining matters appurtenant.

II. MAPS

Every land survey requires a map properly drawn, to a convenient scale, showing *all* the information developed by the survey; also a proper caption, proper dimensions and bearings or angles, and references to all deeds and other matters of record pertinent to such survey, including monuments found and set.

If the survey is made for purposes other than land location, then the map should be conformable to the needs of the work authorized to be done, giving all the necessary information in conformity therewith.

Wherever provided by law or whenever necessary to perpetuate valuable evidence of land line locations, a map of the survey should be recorded in a public office in accordance with the provisions or permissions of the law in the particular state in which the survey is made.

Every map submitted to a client or presented as a public record must bear the name of the Licensed Surveyor responsible for the work, his official seal or license number, and the date.

III. COORDINATE SURVEYS AND BASE TRIANGULATION SYSTEMS

The use of the coordinate survey systems of the U. S. Coast and Geodetic Survey and the U. S. Geological Survey is to be encouraged in all states.

The establishment of secondary triangulation systems tied in and properly related to such coordinate systems is also recommended.

Wherever available, within reasonable distances, every land survey is to be connected with two or more monuments of the main or secondary triangulation system; and the maps of such survey shall show the correct verified coordinates of such monuments and of at least two of the monumented corners of such survey.

IV. MEASUREMENTS

Measurements shall be made with instruments capable of attaining the required accuracy for the particular problem involved. All tapes shall be calibrated to government standard for temperature and pull, and all measurements in the category of accuracy of 1 part in 10,000 or greater shall be made, taking into consideration such temperature and pull in the actual field work.

All transits shall be maintained in close adjustment and the projection of lines shall be made with the system of double centering or proper adjustments made to field readings by predetermined coefficient of error. All angles with a transit shall be determined by the continuous repetition or run-up method, dividing the sum total of the angles by the number of repetitions for the average value of the measured angle.

All leveling instruments shall be maintained in close adjustment, and the readings of elevations shall be made with equal foresights and backsights as nearly as practicable and/or proper adjustment made to field readings by predetermined coefficient of error.

The minimum accuracy of linear measurements between points shall be 1 part in 10,000 on all property lines of boundary or interior survey. Preliminary or reconnaissance surveys shall maintain an accuracy of not less than 1 part in 5,000, except in those cases where general information only is to be obtained and no precise monumented corners are to be created.

In a closed traverse the sum of the measured angles shall agree with the theoretical sum by a difference not greater than 5 seconds per angle, or the sum of the total angles shall not differ from the theoretical sum by more than 90 seconds, whichever is smaller.

A circuit of levels between precise bench marks or a circuit closed upon the initial bench mark shall not differ more than 0.02 foot multiplied by the square root of the number of miles in the circuit, and in no case to exceed 0.05 foot, except in levels for preliminary or rough stadia control, in which case the allowable error of closure may be 0.10 foot.

All field measurements must be balanced, both as to angles and distances, so that the dimensions shown on the map of such survey will be mathematically exact; this will permit the proper use of the prorata method in field relocation.

Bearings or angles on the map shall be given to the nearest 5 seconds; distances to the nearest hundredth foot.

Accuracy of measurement in triangulation dimensions shall conform with the standards set by the U. S. Coast and Geodetic Survey.

V. MONUMENTS

The type and position of monuments to be set on any survey shall be determined by the nature of the survey, the permanency required, the nature of the terrain, the cadastral features involved, and the availability of material.

Monuments set in an inhabited area with improved streets, buildings, and other more or less permanent topographical features, shall be such as will remain for the life of such features and may be set in contact with or alongside of such semi-permanent structures with reasonable security. Monuments set in open country where their maintenance is to be continued for long periods shall be of a material such as concrete, rock, or metal, of sufficient size that they will not be readily removable and will be easily discoverable; and witness monuments of ready visibility shall be placed alongside or nearby, if necessary.

Except in the case of original surveys, in which monuments are to be referred to in the record, permanent monuments shall not immediately be placed on lines or in positions where their destruction is more or less immediate by reason of construction; but semi-permanent monuments, such as stakes, pipes, or other material, shall be set in protected spots at definite known distances from the true corners for purpose of location of such corners after construction is completed. The surveyor shall make a definite commitment of record, that he will correctly set such true corners as soon as their permanence in position can be assured.

VI. PLANNING AND DESIGN

No standard is set for planning and design of land line location as to the form and position of such lines. Each particular problem carries its own plan and its own design within itself. A plan acceptable in one locality or under some conditions may not be adaptable in another.

Reprinted from SURVEYING AND MAPPING,* June 1962, Vol. XXII, No. 2, pages 339-341.

* Quarterly Journal of the American Congress of Surveying and Mapping.

MINIMUM STANDARD DETAIL REQUIREMENTS FOR LAND TITLE SURVEYS*

as adopted by

AMERICAN TITLE ASSOCIATION

and

AMERICAN CONGRESS ON SURVEYING AND MAPPING

Preface

While the "Technical Standards for Property Surveys," adopted by the American Congress on Surveying and Mapping (ACSM) in 1946, are recognized as clear and concise technical standards for property-line surveys, and are so recommended, it is recognized that members of the American Title Association (ATA) have specific problems peculiar to title insurance matters which require particular information in detail and exactness for acceptance by title insurance companies when said companies are asked to insure title to land without exceptions as to the many matters which might be discoverable from survey and inspection and not be evidenced by public records. In the general interest of the public, the surveying profession, title insurers, and abstractors, the American Title Association and the American Congress on Surveying and Mapping now jointly promulgate and set forth such details and criteria for exactness. It is understood that local variations may require local adjustments to suit local situations, and often must be applied. It is recognized that no professional surveyor can ethically undertake any project requiring prudent exercise of professional responsibility unless he is assured adequate compensation. It is recognized equally that, in insuring title, title insurance companies are entitled to, and should be able to, rely on the evidence produced to them, as the basis for their insurance, being of the highest professional quality both as to completeness and accuracy.

STANDARD DETAIL REQUIREMENTS

For a survey of real property and the plat or map of the survey to be acceptable to a title

insurance company for purposes of insuring title to said real property free and clear of survey questions (except those questions disclosed by the survey and indicated on the plat or map), certain specific and pertinent information must be presented for the distinct and clear understanding between the client (insured), the title insurance company (insurer), and the surveyor (the person professionally responsible for the survey). These requirements are:

1. The plat or map of such survey must bear the name, address, and signature of the licensed land surveyor who made the survey, his official seal and license number (if any, or both), the date of the survey, and the caption *Land Title Survey* with the following certification:

To (name of client) and (name of title insurance company, if known).

This is to certify that this map or plat and the survey on which it is based were made in accordance with the "Minimum Standard Detail Requirements for Land Title Surveys" jointly established and adopted by ATA and ACSM in 1962.

(signed) (SEAL)
License No.

2. The title insurance company or the client, at the time of ordering a survey, should notify the surveyor that a "LAND TITLE SURVEY" is required, and furnish to the surveyor the record description of the property and the record easements or servitudes and covenants affecting the property, to which the LAND TITLE SURVEY must subsequently make reference. The names and deed data of all adjacent owners as available, and all pertinent information affecting the property being surveyed, should be transmitted to the surveyor for notation on the plat or map of the survey. If the area of the parcel is required, the title insurance company or the client shall so clearly indicate to the surveyor. If the plat or map of survey is to include thereon a note as to zoning classification of the property and indicate setback or building restriction lines (if such information can be platted on a map),

* Approved by the Property Surveys Division of the American Congress on Surveying and Mapping at its Annual Meeting, March 13, 1962, on a trial basis. This action of the Division was endorsed by the ACSM Board of Direction on March 15, 1962. Approved by the American Title Association at its Winter Conference, March 2, 1962.

the title insurance company or the client shall so clearly indicate to the surveyor. If applicable, the surveyor shall be informed by the title insurance company or client of any survey requirements of the Federal Housing Administration or Veterans Administration.

3. The surveyor's field work must be performed to locate the property corners accurately. The allowable positional tolerances of said corners may not be greater than:

(a) 0.02 foot in urban area blocks wherein buildings can be erected along the property line, or where high land values so warrant.

(b) 0.04 foot in urban or suburban subdivision interior blocks and/or urban and suburban lots or parcels.

(c) 1 foot per 5,000 feet of perimeter in rural areas, except as follows:

(i) Closer tolerance is required where land value in rural areas is increased by adjacency to major highway intersections or thruway complexes, building congestion, oil or mineral rights, or land value is increased for any other reason.

(ii) When a parcel of land is extremely long or narrow, closer tolerance is required on the shorter narrow dimensions to qualify acceptable corner positioning in relation to the narrow width.

The surveyor shall note on the plat or map of survey the following:

"Maximum positional tolerance of corners is."

When the surveyor has doubt as to the location on the ground of street or lot lines being within the tolerances cited above (for such reasons as street and lot lines being undefinable or indefinite because of insufficient monuments or markers in the ground or where errors are found to exist in the descriptions of legal or recorded plats or maps of streets and lots), the surveyor shall clearly indicate the nature of the difficulty or discrepancy and give his professional opinion as to range and scope of differences possibly involved and the effect, under the circumstances, of same on the surveyed positions. It is expected that the exercise of professional judgment by the surveyor will minimize differences of opinions with other professional surveyors exercising equally prudent judgment in such situation.

4. On the plat or map of a LAND TITLE SURVEY, the survey boundary should be drawn to a convenient scale, with that scale clearly indicated. If feasible, a graphic scale should be included. When practicable, the

plat or map of survey should be oriented so that North is at the top of the drawing. Supplementary or exaggerated-scale diagrams should be presented accurately on the plat or map and drawn to scale. No plat or map drawing less than the minimum size of 8½ inches by 11 inches will be acceptable.

5. The plat or map of a LAND TITLE SURVEY shall contain, in addition to the required items already specified above, the following applicable information:

(a) All data necessary to indicate the mathematical dimensions and relationships of the boundary represented, with a required mathematical closure of not less accuracy than 1 part in 10,000; with angles given directly or by bearings; with the length of curve together with the radius, chord, and chord bearings. Bearings should refer to true North, or to State Plane Coordinate North, or to some well-fixed bearing line so that the bearings may be easily reestablished. All bearings around the boundary should read in a clockwise direction. The North arrow, preferably in the upper right quadrant of the drawing, must be referenced to its bearing base.

(b) When record bearings or angles or distances differ from measured bearings, angles, and distances, both the record and measured bearings, angles, and distances shall be clearly indicated.

(c) Measured and record distances from corners of parcel surveyed to the nearest right-of-way lines or streets in urban or suburban areas, together with evidence of found lot corners, should be noted. Where conditions warrant, the distances to the intersecting streets in both directions from the surveyed premises, with the bearing of such streets, should be indicated. Names and legal lines and widths of streets, roads, and avenues should be given. Where the surveyor has notice of changes in the lines of such streets or roads, the changes should be noted, with the date of and authority under which the change was made.

(d) The identifying title of all record plats or filed maps which the survey represents, wholly or in part, must be shown with their filing dates and map numbers, and the lot, block, and section numbers or letters of the surveyed premises. Names of adjoining owners and/or recorded lot or parcel numbers, and similar information where known, must be shown. Interior parcel lines must clearly indicate contiguity, gores, and/or overlaps.

(e) All monuments, stakes, or marks, *found or placed*, must be shown and noted to

indicate which were *found* and which were *placed*. All evidence of monuments, stakes, or marks found beyond the surveyed premises, on which establishment of the corners of the surveyed premises are dependent, shall be indicated. The character of any and all evidence of possession must be stated and the location of such evidence carefully given in relation to the surveyed boundary lines. Where there is no physical evidence of possession along the record lines, the plat or map of survey must note along the line—"No physical evidence of line."

(f) The character and location of all buildings upon the plot or parcel must be shown and their location given with reference to boundaries. Proper street numbers should be shown where available. Physical evidence of easements and/or servitudes of all kinds, including but not limited to those created by roads; rights of way; water courses; drains; telephone, telegraph, or electric lines; water, sewer, oil or gas pipelines, etc., on or across the surveyed property and on adjoining properties if they appear to affect the enjoyment of the surveyed property, should be located and noted. If the surveyor has knowledge of any such easements and/or servitudes, not physically evident at time present survey is made, such physical non-evidence should be noted. Surface indications, if any, of underground easements and/or servitudes should also be shown. If there are no buildings erected on the property being surveyed, the plat or map should bear the statement "No Buildings."

The character and location of all walls (independent, division, party, or otherwise) and whether or not the same are plumb, buildings or fences within two (2) feet of either side of the boundary lines must be noted. Location of both sides of party walls and thickness should be shown. If the building on premises has no independent wall, but uses any wall of adjoining premises, this condition should be shown and explained. The same requirements apply where conditions are reversed. Physical evidence of all encroaching structural appurtenances and projections, including but not limited to fire escapes, bay windows, windows that open out,

flue pipes, stoops, eaves, cornices, arcways, steps, trim, etc., by or on adjoining property or on abutting streets, must be indicated with the extent of such encroachment or projection. Openings such as windows, doors, etc., in walls of adjoining premises within two (2) feet of the boundary lines being surveyed (other than street lines) should be shown. If the client or the title insurance company wishes to have same information as above, with regard to walls or buildings *more* than two (2) feet beyond the boundary lines of the premises being surveyed, the client or title insurance company will assume the responsibility of obtaining such permissions as are necessary for the surveyor to enter upon the adjoining property to make such determination. In the absence of such permissions, the surveyor will not be obligated to so enter.

Joint or common driveways and alleys must be indicated. Independent driveways along the boundary must be shown together with the width thereof. Encroaching driveways, strips, ribbons, aprons, etc., must be noted.

Cemeteries and burial grounds located within the premises being surveyed must be shown by actual location.

Springs, streams, rivers, ponds, or lakes located, bordering on, or running through the premises being surveyed must be shown by actual location.

Streets abutting the premises not physically opened should be so noted.

6. As a minimum requirement, the surveyor shall furnish at least two sets of prints of the plat or map of survey to the title insurance company or the client. The prints should be on durable and dimensionally stable material of a quality standard acceptable to the title insurance company. At least two copies of legal boundary descriptions prepared from the survey shall be similarly furnished by the surveyor. For connecting record, reference to the date of the LAND TITLE SURVEY, surveyor's file number (if any), political subdivision, and similar information shown on the plat or map of survey, shall be included and incorporated for documentation.

MORTGAGEE'S INSPECTION

A Resolution adopted by ACSM Land Surveys Division March 9, 1969, Washington, D.C.
Approved for publication and distribution by the ACSM Board of Direction, March 14, 1969.

WHEREAS, it has come to the attention of the Land Surveys Division of the American Congress on Surveying and Mapping, that in many localities Banks and other Mortgages, in dealing with homeowners who are applying for Mortgage Loans, charge said owners sums in the range of \$30 to \$50 for what they refer to as "Surveys"; and

WHEREAS, these so-called "Surveys" are, at the best, merely cursory inspections to verify the identification of the building used as security for the loan by a procedure of little engineering merit; and

WHEREAS, the use of the word "Surveys" conveys to the mind of the average mortgagor, a marking by stakes or other markers, of the property corners, a procedure which is not part of these so-called "Surveys"; and

WHEREAS, the resulting confusion misleads many mortgagors who expect a "Survey" to include setting stakes or other markers of the property corners, and leads to great criticism of Surveyors in general, as well as a loss of confidence in the lending agency:

THEREFORE, BE IT RESOLVED, That the Land Surveys Division of the American Congress on Surveying and Mapping condemns the use of the word "Surveys" in connection with such mortgage loan work and recommends the use of the term "Mortgagee's Inspection" for such work.



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AMERICAN CONGRESS ON SURVEYING AND MAPPING

National Headquarters: 430 Woodward Building, 733 - 15th Street, N.W., Washington, D. C. 20005

Divisions on: Control Surveys • Cartography • Land Surveys

LAND SURVEYS DIVISION

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MORTGAGE LOAN INSPECTION COMMITTEE

FINAL REPORT & RECOMMENDATIONS

MARCH 15, 1972

The Mortgage Loan Inspection Committee, formed in March, 1969, after the adoption of a resolution condemning the use of the word "survey" in connection with mortgage loan work, hereby submits this Final Report and Recommendations for your approval. The Committee, consisting of Donald E. Schultz - Cincinnati, Ohio - Chairman
William J. Dempsey - Cleveland, Ohio
Leslie Judd - Oklahoma City, Oklahoma
Frank R. Schilling, Jr. - Panama City, Florida
Edward K. Elder - Albuquerque, New Mexico
Donald B. Schwartz - Geneseo, New York

have been active during the past three years gathering information from across the nation by means of questionnaires, presentations of papers at national, state and local meetings, official and unofficial meetings with state groups and local Real Estate groups, and presenting progress reports at each Annual and Mid-Year Meeting of ACSM. There has also been continued input from various individuals from around the nation, the latest being a movement in Indiana to establish a standard certificate form, and a panel discussion with a Title Insurer, Banker, Lawyer and Surveyor at the recent meeting of the Michigan Affiliate. Tabulations and lengthy discussions of the material gathered have led to the following definition.

A Mortgage Loan Inspection shall be defined as an instrumentality, common to the Mortgage Industry, whereby substantial proof is submitted to the Mortgagee that the buildings and/or other improvements are actually located on the land covered by the legal description of the Mortgage, and that said Mortgage Loan Inspection is a Professional Service, provided by experts in measurements, solely for the intent of the Mortgagee and/or Title Insurer. This Mortgage Loan Inspection is not made for the benefit of, or use by, the purchaser or present owner of the subject real property. This Mortgage Loan Inspection does not constitute an improvement to the subject real property, and is only a professional opinion which the interested parties may use in order to arrive at any decisions they may have to make concerning said real property.

This definition should be used as a national standard for educating the public, the Mortgagees and Title Insurers as to actually what a Mortgage Loan Inspection is and is not.



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CERTIFICATION STATEMENT

FOR ALL MORTGAGE LOAN INSPECTION FORMS

This inspection (identification) plat is made for and at the instance of the (Mortgagee and/or Title Insurer).

I hereby certify that this inspection plat shows the improvement or improvements as located on the premises described, that the improvement or improvements are entirely within lot lines, and that there are no encroachments upon the premises described by the improvement or improvements of any adjoining premises, except as indicated. I further certify that there are no record plat easements affecting the tract shown hereon, except as noted.

I further certify that this Mortgagee's Inspection was prepared for Identification Purposes only for the Mortgagee in connection with a new mortgage, and is not intended or represented to be a land or property line survey; that no property corners were set; and is not to be used, or relied upon, for the establishment of fence, building, or other improvement lines. No responsibility is extended herein to the present or future land owner or occupant.

By _____ (Signed)
Registered Land Surveyor

(SEAL)

The CHAIRMAN. Now, we come to the panel. Mr. Fletcher Rush, representing the Florida bar.

Mr. Robert Crenshaw, Jr., representing the State Bar of Georgia.

Angelo Mastrangelo and Harold J. Ruvoldt, representing the New Jersey State Bar Association.

B. George Ballman, president of the Montgomery County, Md., Lawyers' Association.

STATEMENT OF FLETCHER G. RUSH, REPRESENTING THE FLORIDA BAR; ROBERT W. CRENSHAW, JR., REPRESENTING THE STATE BAR OF GEORGIA; ACCOMPANIED BY S. H. McCALLA; ANGELO MASTRANGELO AND HAROLD J. RUVOLDT, REPRESENTING THE NEW JERSEY BAR ASSOCIATION; AND B. GEORGE BALLMAN, PRESIDENT OF THE MONTGOMERY COUNTY, MD., LAWYERS' ASSOCIATION

Mr. Chairman, I am Fletcher G. Rush. If it is all right with the subcommittee, Mr. Ballman, George Ballman, has said he would prefer to go first. And that is perfectly all right with us if it is all right with the subcommittee.

The CHAIRMAN. Very well, it is all right. Mr. Ballman.

Mr. BALLMAN. Mr. Chairman and members of the committee, my name is B. George Ballman, and I am a lawyer licensed to practice in the State of Maryland. I am here today in my capacity as chairman on the Montgomery County, Md., Lawyers' Association. In that capacity, I urge the prompt enactment into law of S. 2228 relating to real estate settlement service costs.

The MCLA is an association of lawyers who provide settlement services in connection with the transfer of one- to four-family dwellings and other properties in Montgomery County, Md. Among the services provided by our membership are the searching of title, the rendering of title opinions, the preparation of legal documents such as deeds, deeds of trust, and releases, and the handling of settlements and closings.

MCLA supports this legislation in that it addresses the causes of high settlement costs in a meaningful way. We firmly believe that this legislative approach is the appropriate solution to any existing problems.

We have submitted for the record, Mr. Chairman, a statement which I would request be printed in the record as if orally read. I would just like to summarize very briefly some of the comments that we have.

The important reforms in S. 2228 that we support are the "kick-back" clause, that is the payoffs, kickbacks, and referral fees.

We support the home buyer having adequate notice ahead of time of his settlement costs and to whom they are rendered and paid and also the book explaining the process and nature of settlements.

We have some suggestions as to additional reforms which might be taken up as amendments to S. 2228. One would pertain to the excessive escrow deposit requirements to insure payment of real estate taxes and insurance premiums, that these should be reduced and controlled.

We wholeheartedly endorse as discussed previously the land recordation reform. The HUD/VA study on mortgage settlement costs of March 1972, states that :

High costs and other problems of settlement stem in no small part from basic inefficiencies in the multiple and complex systems of conveyancing, recording, and assuring validity of title to parcels of real estate.

We would suggest as another step that the designation of settlement attorneys or title companies as required by lenders be discontinued. This is prevalent in certain parts of the country, including parts of Maryland.

I have with me an exhibit that has not been submitted to the subcommittee which I would like to have put into the record. It is a settlement statement which was presented to the Subcommittee on Housing of the House Banking and Currency Committee on February 24, 1972. I would request that that be put in.

The CHAIRMAN. Without objection, that will be done.

[The supplemental statement follows:]

PREPARED STATEMENT OF DAVID E. BETTS, PRESIDENT-ELECT, MARYLAND STATE BAR ASSOCIATION, BEFORE HOUSE BANKING COMMITTEE, FEBRUARY 24, 1972

Mr. Chairman and Members of the Committee :

My name is David E. Betts and I am a lawyer licensed to practice in the State of Maryland and the District of Columbia, with offices at 22 West Jefferson Street in Rockville, Maryland. My practice began in 1935 in Washington, D.C. and in Maryland, early in 1938. I have been engaged in general practice continuously thereafter with the exception of four years with the U.S. Army Air Forces, my firm specializing in real estate, a large segment of that practice having to do with buyer-seller-lender settlements.

As many of you may know, the City of Rockville has grown from a town of 2,000 when I opened my office, to well over 45,000 today, and as Rockville has grown, so has the metropolitan area of Washington, D.C. As one who has engaged in all phases of the real estate practice, I believe that I can speak to you today as one familiar with the practical aspects of the subject. I am a past President of the Montgomery County Bar Association, and am now President-Elect of the Maryland State Bar Association. In this capacity I feel very sensitive to the image of the lawyer and the legal profession, and I hope to present a little background material which may be helpful in better understanding the problems with reference to closing costs generally.

I might add that the Executive Committee of the Maryland State Bar Association met yesterday and endorsed in principle the comments which I am about to make with reference to the proposed legislation, but obviously neither the Executive Committee, the Board of Governors, nor the Real Estate Section of the Association has had an opportunity to make a detailed study of the Bill. We would like to have an opportunity to do this and would be glad to assign members of the appropriate committee to work with your counsel with particular reference to sections of the Bill which might apply to practices existing in various parts of the State of Maryland, which differ in many respects from county to county and the City of Baltimore. We would like to aid the Committee in bringing to its attention any factual material available which would aid in producing legislation carefully conceived and in the long run, beneficial to all citizens. To accomplish this, all sides of the picture must be seen however.

Before undertaking an analysis of the proposed legislation which I have in summary form, I would like to bring to the Committee's attention certain basic facts relative to attorneys fees for handling examinations of title, preparation of papers, and settlement charges. One of my partners has prepared, and I am attaching hereto as an exhibit, a settlement statement for the settlement of the sale of a \$45,000 house, assuming a \$30,000 loan, in Montgomery County, Maryland. In order to compare the current costs of this settlement with the costs

of thirty years ago and lawyers fees relating to such settlement, the statement shows the charges in effect for the same price house in the year 1940. Lawyers fees for this settlement today would be \$327 as against the sum of \$162 in 1940. I might add parenthetically that the same house would probably have sold for much less in 1940. Attorneys fees on the settlement in 1940 represented slightly more than one-third of 1% of the purchase price, whereas today's settlement costs as to attorneys fees represent approximately three-quarters of 1% or an increase of about 100%. I must insert here a comment made by one of my law partners in viewing these figures, when he remarked that he recalled clearly in 1940 when he delivered the Washington Post, the total cost per month for the daily and Sunday Post was 60¢, whereas in 1972 the cost is \$3.75, or an increase in price of approximately 575%! I am sure some members of the Committee may remember as I do, when one could purchase a deluxe model of one of the leading makes of automobiles, completely equipped for \$975.00 whereas the same car today would cost approximately \$4500. These examples could be found with reference to virtually everything purchased today, whether it be newspapers, automobiles, meat and potatoes, or professional services.

I bring these figures to the attention of the Committee because I think they illustrate the fact that attorneys fees have not increased in proportion to the increase of these other commodities. As stated earlier, lawyers are interested in legislation designed to help the citizens of this area or the entire country, but we vigorously protest legislation which is based upon incorrect statements regarding the increase in attorneys fees for handling real estate settlements.

Turning to Part A of the proposed Bill regarding elimination of excess charges, the "prohibition against kickbacks" is already the law of Maryland in Article 27, Section 465A, passed in 1967. An important exception appears in the Maryland law however, providing "nothing herein contained shall be construed as preventing the payment of commissions to agents who have been duly licensed as such by the State Insurance Department". The evil this is intended to cure has long been recognized by the organized Bar. It usually involves the basic evil of lawyer dividing a fee with a layman or soliciting business by offering anything of value in exchange for the referral. As long ago as 1957 and '58, the Montgomery County Bar Association took action to force the disbanding of a number of corporate entities created by lawyers specializing in real estate practice, where the solicitation was being carried on by the corporation, which corporation was in fact the one or two lawyers who specialized in this field. When shown that this practice violated either the canons of ethics or the statutory prohibitions against a corporation practicing law, all of the lawyers concerned voluntarily ceased this practice.

It seems to me however, that the prohibition against the improper payment of fees or "kickbacks" will not necessarily result in a reduction in charges to the home buyer, which incidentally, I do not feel are out of line as set forth above, and have been increased by the incredible amount of transfer tax levied by the various local governments as will be noted later. In Maryland the law authorizes the payment of commissions on title insurance premiums to clearly authorized agents. In Section 208 of Article 48A of the 1951 Code of Maryland, attorneys at law were included as those authorized to receive such commissions, but this is no longer so broad and the payment is restricted to licensees. At the same time however, Section 226 of Article 48A prohibits the giving of rebates, credits or reductions of the premiums in any policy of insurance. Thus, if the lawyer is prohibited from receiving a commission, the same amount could not be credited to the home buyer or mortgagor without violating the Maryland Statute.

It is also interesting to note that although the price of everything else in the United States has increased drastically, title insurance premiums have remained basically the same since 1940 with the exception of an increase of \$5.00 in the binder fee.

Reference to the settlement statement showing the hypothetical sale and loan shows that the title insurance premium would be \$75.00 exclusive of the binder fee. The title insurance commission to the settling attorney would be approximately \$22.00. This is not an insignificant sum, but it pales into insignificance when compared to the truly inflated costs of settlement found in the portion representing taxes which must be paid to the state and the county. An analysis of the Washington Post article on the so-called shocking differences in settlement costs between the Boston area and the Washington area, indicate that the differences in attorneys fees are virtually non-existent, but that the tax bite in the Washington area is approximately five times that charged in the Boston area.

I have not had an opportunity to review the exact terms of the portion of the proposed legislation, which would prohibit charging a home buyer for any legal service in connection with a real estate settlement, except where he has personally hired his own attorney who represents his interest exclusively at such settlement, but I would see some problem here as to the definition of "legal services". In the first place, it should be made clear that a real estate settlement is not an adversary proceeding. As its term implies it is the orderly settlement and consummation of a contract between a buyer and a seller, and a contract or commitment between a borrower and a lender. The buyer, seller and borrower and lender in most cases, before consulting the attorney who is to conduct the real estate settlement have entered into all of the agreements necessary. The settlement agent is then charged with carrying out the terms of agreements already entered into between the parties, and the settlement is not a matter of a contest between litigants, and so long as there is no conflict of interest or dispute between the parties, there is no reason why one attorney cannot successfully conduct a real estate settlement.

With these thoughts in mind, it would appear that passage of this legislation could represent a windfall for the legal profession since it would indicate to the home buying public that to be protected they must engage the services of a lawyer who would have nothing to do with the settlement except represent the interest of the home buyer. It would further carry the implication that the seller should be represented by an attorney and probably the lender also. In addition, somewhere along the line someone is going to have to examine the title, prepare the documents, the settlement statements, collect the proper taxes, make the proper adjustments, hold the funds, make the proper payoffs, attend to the recording of the documents and obtain title insurance, if it is required.

The passage of this legislation could also bring up some interesting questions, such as, is the buyer's attorney responsible for obtaining title insurance for him?—does the seller's attorney physically obtain the sales proceeds check from the settlement attorney?—would all of the parties speak to each other only through their attorneys? It would appear that this provision would tend to increase rather than decrease the costs of settlements.

I have previously touched upon the provision for attorneys in Maryland to receive a commission on a title insurance premium. I respectfully disagree with the summary that such transactions provide the attorney with a profit at the expense of his client and that the attorney is automatically in a conflict of interest situation.

I have already pointed out that the title insurance situation is covered by statute and of course, title insurance premiums are regulated by the Insurance Commissioner. Therefore the cost to the home buyer is the same no matter who receives the commission. Obviously for ethical purposes, full disclosure should be made at the time of settlement or before, but there is no additional cost nor is there a conflict of interest situation. The title insurance company and the home buyer are both interested in the same thing, and that is a good title. Both the lawyer and the title insurance company are responsible for errors or omissions. If the title insurance company suffers by reason of negligence of the lawyer in reporting on the title, it will look to the lawyer for reimbursement. The lawyer is certainly not representing his client and the title insurance company in any adversary situation, since their interests are identical.

As to the proposed prohibition against price discrimination, I have never encountered the situation apparently intended to be covered. Our firm has never engaged in such "dual fee practice" and I know of no one who has. However, I would be interested in the definition of "comparable services" as proposed.

The proposal that the mortgage lender pay for mortgagee title insurance, has I am sure, been commented upon by representative lenders, but I can only say that I cannot believe it would result in lower costs to the home buyer and borrower in the long run. Any increase in the cost of lending money has always resulted in the economic necessity of passing on the additional cost in some other form, usually at a higher figure. An example is the Federal Truth in Lending Statement, where some mortgage lenders charge \$20-\$25 for preparation of the statement.

Under "Part B—Information and Disclosure for Home Buyers" I think the proposed information booklet if properly prepared by persons actively engaged in real estate settlement work and knowledgeable in the field, would be a great help to home buyers. However, I have grave reservations as to the determination

of fair and reasonable amounts to be charged. This could result in price-fixing in reverse.

Another touchy area would be the matter of furnishing information on selecting persons who provide services in connection with real estate settlements.

The provision which would require the furnishing of settlement cost in advance of the settlement date is generally a good one, and it has been the practice of our office on request, to furnish settlement figures in advance when all of the information is readily available prior to settlement. I question however whether the ten day period proposed by the Bill is reasonable, since we have had many experiences with individuals moving from one section of the country to another and requiring settlement within only a few days after final approval of the loan.

As to "Part C—HUD Title Insurance Program," I am sure that the title insurance companies have commented upon this proposal. Time would not permit a philosophical discussion of my personal opposition to the Federal Government stepping into another segment of private enterprise, but I can only say that the proposal certainly presents a task of incredible magnitude.

As to the payment of interest on escrow accounts, I am sure the banking fraternity has commented, but I can only say that one life insurance company which makes residential loans throughout the United States, will not, even if requested by the home buyers, collect or maintain escrow accounts, since it has been their experience that the cost of servicing the same, far outweighs the income received from the use of money held in escrow to pay taxes and insurance.

"Part E—Disclosure of Previous Selling Price on Residential Real Property" seems completely unworkable and probably unconstitutional. As a practical matter, it is not always possible to obtain accurate information as to previous sale prices, and I would hope that the question of market value could still be determined by the buyer on the basis of what he sees before him and not what someone else had the good or bad fortune to pay for the same house. I would strongly oppose this provision.

"Part F—Prohibiting Certain Interlocking Situations Between Financial Institutions and Real Estate Related Businesses," appears to me personally to be unnecessary. It presupposes a benefit to someone "at the expense of the home buyer," but I have difficulty in seeing where any such expense is created over and above the expense the home buyer is bound to undertake in any event. There have been in existence for many years relationships of the types mentioned here, which are of the highest ethical order and which are beneficial to both the lending institution and the borrower because of the knowledge and ability of the individuals involved.

The proposed prohibition against performing legal services for any other person in connection with a loan where the lawyer is a trustee, director, or officer of a bank, on the theory that he cannot fairly represent the interests of both, is also unnecessary in my opinion. As previously mentioned, the loan commitment or contract between the bank and the borrower is made prior to the time that the settlement attorney is employed by either party. He is then bound to conduct the settlement of the loan in accordance with the terms of the commitment, and the proceeding is not adversary. Obviously, if the situation should degenerate into a conflict, the attorney would be forced to step aside, but in practice this situation seldom develops.

As to "Part G", which would require disclosure to the Federal Supervisory Agency of certain loans to directors, officers, and employees, this would appear to be reasonable and in accordance with what I understood the present law to be.

I repeat my previous offer on behalf of the Maryland State Bar Association to make available the services of such of its committees or sections as might be of assistance to this Committee. I would like further to state that our Association has in the past, and intends in the future, to take action against lawyers whose conduct is improper or unethical, but as a profession, we do not wish to be the target of unjustified criticism in increasing settlement costs to the home buyer when the finger should be pointed instead at the tax collector and increases in costs of everything. Thank you for the opportunity to be here.

(The exhibit referred to of a closing cost statement in the sale of a \$45,000 house in Montgomery County, Maryland, follows:)

I have been fully advised as to coverage and cost of mortgage and owners' title insurance, and elect (not) to purchase an owners' policy.

Mr. BALLMAN. I would point out that that settlement statement indicates total settlement charges of January 1, 1972, for a \$45,000 house as being \$2,524. Of this, \$1,414.50 are taxes and recording charges. An additional \$782.50 are lenders' requirements, making a total of \$2,197. The remainder is \$327 which would be lawyers' charges and charges for title insurance.

In that statement, in the middle part of it, we have also put the 1940 charges as they existed in the year 1940. It is interesting to note that the State transfer tax of \$225 did not exist, that the county transfer tax of \$450 did not exist, that the revenue stamp charge by the State and county of \$197.72 in 1972 was only \$49.50 in 1940.

Also, the real estate taxes which we estimated as \$1,035 in 1972 would have been considerably less. The attorney's fees in 1940 would have been \$162. They are now approximately double that amount. That is a 100-percent increase.

I am sure the subcommittee can recall back to maybe 1940, or 1942, when you could buy a nice car for \$945 fully equipped that might cost approximately \$5,000 now.

At this point, Mr. Chairman, I would close and be available to answer any questions with the rest of the panel.

The CHAIRMAN. I notice here the county transfer tax is \$450. Is that based on a percentage?

Mr. BALLMAN. Yes, sir. That is 1 percent for the purchase price of the home in Montgomery County, over \$35,000. Under \$35,000 down to \$20,000, it would be a half a percent. And below \$20,000, the county does not charge a transfer tax.

The State of Maryland has this one-half transfer tax based on the purchase price regardless of the price of the home or property.

The CHAIRMAN. Does that mean total closing costs of \$2,524?

Mr. BALLMAN. I beg your pardon, sir?

The CHAIRMAN. Is \$2,524 the total cost of closing?

Mr. BALLMAN. Yes, sir. The \$2,524 is the total cost of closing of this \$45,000 house. And the component parts are broken down in those three main categories under the debit column. And I have written in pen the amount of fees that the lawyer would collect at settlement, but which he handles only as a conduit. He passes them back to the county, to the State, to the recorder's office and to the lender.

The CHAIRMAN. Of course, I notice that the \$1,414.50 was the tax on recording charges.

Mr. BALLMAN. Yes, sir; that would be the real estate taxes, transfer taxes, revenue stamps, and clerk of court's charge for recording the documents.

The CHAIRMAN. And it also includes tax escrow for 6 months.

Mr. BALLMAN. That item, sir, is under the lender's requirements. That is in the next column. In Montgomery County, most lenders require a year's escrow for taxes. That would range between 11 to 13 months, depending on the lender.

Senator BROCK. Why have you only got 6 months?

Mr. BALLMAN. The 6-month's escrow goes to the lender. And above that figure, right under the very first item, tax and recording charge, is a 6-month charge to the buyer which is reimbursed to the seller. This was figured as of January 1. We have a fiscal year for taxes. So the buyer would reimburse the seller for 6 months, January through June, and give the lender 6 months for the next year's payment of taxes.

[Mr. Ballman's complete statement follows:]

PREPARED STATEMENT OF
B. GEORGE BALLMAN, CHAIRMAN OF
THE MONTGOMERY COUNTY LAWYERS ASSOCIATION
PRESENTED BEFORE THE SUBCOMMITTEE ON
HOUSING AND URBAN AFFAIRS OF THE
SENATE COMMITTEE ON BANKING,
HOUSING AND URBAN AFFAIRS

July 30, 1973

Mr. Chairman and Members of the Committee, my name is B. George Ballman and I am a lawyer licensed to practice in the State of Maryland. I am here today in my capacity as Chairman of the Montgomery County, Maryland Lawyers Association. In that capacity, I urge the prompt enactment into law of S. 2228 relating to real estate settlement service costs.

The MCLA is an association of lawyers who provide settlement services in connection with the transfer of one-to four-family dwellings and other properties in Montgomery County, Maryland. Among the services provided by our membership are the searching of title, the rendering of a title opinion, the preparation of legal documents such as deeds, deeds of trust, and releases, and the handling of settlements.

MCLA supports this legislation in that it addresses the causes of high settlement costs in a meaningful way. MCLA firmly believes that this legislative approach is the appropriate solution to any existing problems.

Important Reforms Contained
in S. 2228

Kickbacks -- In MCLA's view, real estate practices known as "running" and "capping," payoffs, kickbacks and referral fees should be prohibited because these practices increase costs to home buyers while providing them no additional benefits. S. 2228 would prohibit these practices by providing that settlement fees may be charged only for services actually performed and may not include incremental charges to be rebated to third parties as "finders' fees."

Home buyer settlement information -- MCLA also believes that home buyers should be informed in advance of closing of the nature, dimension, and purpose of each charge they will incur in connection with a settlement. S. 2228 would accomplish this result by requiring that lenders furnish each prospective home buyer, at the time he applies for a loan, with a booklet prepared by HUD explaining the settlement process and the nature of settlement charges. Furthermore, the lender would be responsible for informing each buyer ten days in advance of settlement of all charges he will be expected to pay at the closing.

Additional Reforms Suggested
as Amendments to S. 2228

Escrow deposits -- Excessive escrow deposit requirements to insure payment of real estate taxes and insurance premiums should be controlled. Unjustifiably large deposits pose two hardships to the home buyer -- they inflate the initial lump sum that must be paid in purchasing a home and deprive the buyer of interest on the money during the escrow period. MCLA would support an amendment to S. 2228 to limit escrow deposits to the amounts actually necessary to assure the lender that insurance premiums and real estate taxes will be paid.

Land recordation reform -- The HUD/VA study on mortgage settlement costs published in March 1972 stated as the first of its general findings and conclusions:

"1. High costs and other problems of settlement stem in no small part from basic inefficiencies in the multiple and complex systems of conveyancing, recording, and assuring validity of title to parcels of real estate."

Because of the expense of extensively altering a real property recording system and because tested innovative ideas for modernizing recording systems are all but nonexistent, local

governmental units are extremely hesitant to undertake basic changes in their recordkeeping systems. The federal government can perform a major service for consumers by financing, in selected localities, demonstration recording systems designed to simplify real property transfers. Accordingly, the MCLA would support an amendment to this legislation authorizing HUD to undertake such demonstration projects.

Designation of settlement attorney or title company --

Lenders in certain areas of the country condition the mortgage loan upon the home buyer's commitment to use an attorney or title company designated by the lender to handle the settlement/closing. Such practices are anticompetitive and tend to inflate the settlement costs. MCLA would support an amendment to S. 2228 which would prohibit mortgage lenders from selecting the settlement attorney or title company in this fashion.

Economic Effects of S. 2228
and Suggested Amendments

In most parts of the country, implementation of the reforms discussed above could tend to reduce present settlement costs in the following ways: (a) We believe that kickbacks

do not represent a major element of settlement expense in this country. Nevertheless, the prohibition against kickbacks may well result in the elimination of an element of expense to some home buyers. (b) The informational provisions of S. 2228 would help to lower settlement costs in two ways. First, by providing consumers with sufficient information to question high costs and seek alternative sources for settlement services. Second, by creating a competitive atmosphere in which settlement services will be rendered to home buyers at lower costs. (c) Escrow deposits have come to represent a major element of settlement expense. Limiting them to reasonable amounts will reduce substantially the total cash outlay required at the time of settlement. (d) The inadequacies of present land recordation systems add significantly to the amount of time, and thus the cost, required to perform such services as searching titles. (e) Prohibiting mortgage lenders from conditioning a loan upon the home buyer's agreement to use a predesignated attorney or title company would provide a greater opportunity for the home buyer to obtain these services at a lower cost.

Disadvantages of Rate-Regulation
of Settlement Costs

MCLA strongly opposes interjecting the federal government into the business of setting maximum fees that lawyers may charge for performing settlement services. National rate-regulation of attorneys' fees is an appropriate response to the fact that settlement charges seem high in some parts of the country. As the HUD/VA mortgage settlement cost study concluded:

"Costs appear to be high in some areas, but unreasonable costs probably occur in fewer areas than may be popularly assumed."

Federal rate-regulation should be avoided when other remedial legislation is possible. Therefore, MCLA favors Section 108 of S. 2228 which would repeal Section 701 of the Emergency Home Finance Act of 1970, under which HUD purported to act in promulgating draft regulations establishing maximum settlement costs.

Control of symptoms rather than causes -- Rate-regulation is a crude tool which does not get at the root causes of high costs. Where abusive practices are common or costs are escalated by inefficient recordation systems, those problems can and should be dealt with directly.

Controlling costs by imposition of maximum ceilings may restrict prices that are perfectly reasonable under the circumstances or, more importantly, may lead to corner-cutting and poor-quality services.

Extensive bureaucracy required -- Any effort by the federal government to establish a fair and equitable rate schedule would require an extensive administrative mechanism to assess the myriad of recording systems, indexing systems, and settlement practices across the nation. The magnitude of the task is evidenced by Secretary Romney's statement on settlement costs to this Committee last year:

"The system of recording real estate title currently in use by most of the counties throughout the country dates back to the colonial period. As real estate became more valuable and the types of interest in real property more diverse, the recording process became more complicated. There are approximately three thousand counties or their functional equivalents in the United States. This means that not only is administration of public records heavily decentralized, but there are inevitable variations in the details and caliber of administration. Some counties do a good job, some a very poor job; and the quality and methods of operation tend to vary with population size, number of land parcels in the county, local real estate activity, competence of

local government personnel and the nature of State statutory provisions pertaining to public land records."

Furthermore, any attempt at federal rate-regulation would require that the federal agency review, compare, evaluate, and ultimately set specific rates in literally thousands of communities across the country. The manifold problems involved in attempting to assess the appropriateness of particular settlement fee amounts are well illustrated by the inadequacies found in the HUD/VA mortgage settlement cost study released a year and a half ago. (See comments of the Montgomery County, Maryland Lawyers Association on Proposed Settlement Cost Regulations, Appendix A hereto; Arthur Andersen & Co., Report on Review of the Analytic Methods and Procedures Used by U. S. Department of Housing and Urban Development to Establish Maximum FHA and VA Mortgage Settlement Charges, Appendix B hereto.)

The creation of a major federal bureaucracy will be required to provide adequate safeguards in any rate-making proceedings to protect individual suppliers of settlement services against arbitrary rate determinations. The necessity of adequate procedural protections is forcefully stated by the decision in Jordan v. American Eagle Fire Insurance Co.,

169 F.2d 281, 288 (D.C. Cir. 1948):

"It is unnecessary to repeat here the classic consideration of rate-making in *Munn v. People of Illinois*. It was there pointed out that he who enters upon a business in which the whole public has a direct and positive interest, must contemplate that the regulation of that business may change from time to time. But to that concept the constitutional limitations of the due process clause must be added. Those limitations are both procedural and substantive. That the procedural necessities include the revelation of the evidence upon which the disputed order is based, an opportunity to explore that evidence and a conclusion based upon reason and not merely arbitrary, is soundly established by a long line of cases."

To establish on a nationwide basis maximum legal fees for each local community, with necessary safeguards against arbitrary and unfair decisions, would require the creation of vast new federal bureaucratic machinery -- all directed at controlling consequences rather than causes.

Competitive market forces -- Rate-regulation, at least insofar as it might control legal fees, is at best unnecessary. Legal fees like any other economic price are subject to control by the pressures of competition. New developments are continuing to render the market for real estate settlement services more free and more competitive. In Maryland, new rules which pertain to settlement practices

were imposed by the Maryland State Bar Association in September. Those rules require that the buyer and seller be provided in advance of settlement with a detailed explanation of the settlement costs and the recipients of all funds. In January of this year, a federal district court in Virginia ruled in the case of Goldfarb v. Virginia State Bar, inter alia, that the minimum fee schedules for handling real estate settlements in Virginia violate the federal antitrust laws. The repercussions of that decision are being felt across the country.

The reforms which would be effected by S. 2228 would free still further the competitive forces in the settlement service market. Kickbacks and referral fees represent not only net direct economic loss to the home buyer but a significant obstacle to free market forces as well. The effect is to prevent the buyer from seeking or accepting a better deal elsewhere and foreclose the lender's or seller's own choice of alternative counsel for a given transaction. Thus, the prohibition of kickbacks in S. 2228 would measurably enhance competition. The same is true of the provisions directed toward better informing the prospective buyer of the nature and amount of expected settled costs. Informed buyers will

be able to exert market pressure by intelligently questioning settlement costs. If S. 2228 is enacted and enforced, settlement practice abuses can be eliminated and costs lowered without need of reliance on yet another new federal bureaucracy.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

AND

VETERANS ADMINISTRATION

PROPOSED)	HUD Docket Nos. R-72-197
SETTLEMENT)	R-72-198
COST)	
REGULATIONS)	VA Docket Nos. FR-72-14496
)	FR-72-14497

COMMENTS

OF THE

MONTGOMERY COUNTY, MARYLAND LAWYERS ASSOCIATION

Dated: October 15, 1972

James F. Fitzpatrick
Richard S. Ewing
Arnold and Porter
1229 Nineteenth Street, N.W.
Washington, D.C. 20036
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County, Maryland Lawyers
Association

COMMENTS
OF THE
MONTGOMERY COUNTY, MARYLAND LAWYERS ASSOCIATION

HUD and VA have proposed regulations that would limit the amounts that persons providing settlement services could charge buyers and sellers of one- to four-family dwellings for those services in selected areas. ^{*}/ Under the proposed regulations, mortgages on such properties would not be eligible for FHA or VA insurance or guarantees if settlement charges in excess of HUD- and VA-prescribed maximums are made. The areas that would be covered by the regulations are: (1) Cleveland SMSA, (2) Newark SMSA, (3) San Francisco-Oakland SMSA, (4) Seattle-Everett SMSA, (5) St. Louis SMSA and (6) Washington, D.C. SMSA.

The maximum charges for settlement services proposed by HUD for the Washington, D.C. SMSA are:

^{*}/ HUD's proposed regulations appear at 37 Fed. Reg. 13185 (July 4, 1972); VA's appear at 37 Fed. Reg. 17424 (August 26, 1972).

1. Credit Report - governed by certain HUD contracts
2. Field Survey - \$55
3. Title Examination -
 District of Columbia - \$90
 Maryland and Virginia - \$130
4. Title Insurance -
 \$2 per \$1,000 of coverage for lenders policy;
 \$3 per \$1,000 of coverage for owners policy;
 \$3 per \$1,000 of coverage, plus \$10, for
 lenders and owners policies issued simultaneously
5. Closing Fee - \$50
6. Pest and Fungus Inspection - \$15

The maximums proposed by VA are identical to those proposed by HUD except that VA would not permit a closing fee to be charged. The regulations provide that where maximum settlement charges have been set for a geographic area no other charges may be made for settlement services. We have been advised that under the regulations no charges could be made for settlement services, such as preparation of documents, that are not explicitly mentioned in the regulations.

The Montgomery County, Maryland Lawyers Association ("MCLA") is an association of lawyers who provide settlement services in connection with the transfer of one- to four-

family dwellings and other properties in Montgomery County, Maryland. Some MCLA members are sole practitioners, others are members of firms. Many provide such services regularly, others provide such services only occasionally. Among the services provided are searching titles, rendering title opinions, preparing legal instruments, and handling closings. A substantial percentage, perhaps 30%, of the settlement services rendered by MCLA members are rendered in connection with FHA or VA properties, and all of those services would be directly affected by the proposed regulations.

MCLA's comments are directed, in general, only at those portions of the proposed regulations under which maximum charges for settlement services ^{*}/ are specified for geographic areas and, in particular, at the maximums proposed for the Washington, D.C. SMSA.

^{*}/ Including VA's proposal to eliminate closing fees.

In summary, MCLL's comments are:

1. HUD lacks statutory authority to set maximum charges for settlement services. */
2. Because it failed to disclose the data and procedures underlying its proposed maximum charges, HUD has failed to give parties that would be affected by its regulations an adequate opportunity to comment on the proposed regulations.
3. The maximum charges would violate constitutional requirements because they were determined without consideration of the actual costs of providing the services and are confiscatory.
4. Based on the limited information we have gathered, it appears that the proposed maximums were determined arbitrarily.
5. By constitutional and statutory requirement, HUD may not impose maximum charges without a hearing.

We believe that HUD should not proceed to establish any maximum charges for settlement services. We believe that HUD should take no action until Congress again addresses the subject of settlement services next

*/ HUD claims it is authorized to set maximum charges under Section 701 of the Emergency Home Finance Act of 1970. We do not address this issue in these comments but incorporate by reference the comments on the issue made by others in their filings with HUD.

year. If, however, HUD declines to stay its hand and if it believes it presently has authority to set maximums, then it should proceed to set maximums in a constitutionally permissible manner. HUD cannot establish maximums for any jurisdiction until it has before it, at the very least, detailed information as to the actual costs of furnishing the services in question in that jurisdiction.

We respectfully request an opportunity to present oral argument to HUD on the proposed regulations.

I. HUD Has Not Given Affected Parties
An Adequate Opportunity To Comment
On The Proposed Regulations.

Summary. In setting maximum charges, HUD is engaged in rate making, and a rate-making agency may not establish rates without disclosing the evidence upon which it determined that the rates are reasonable and affording affected parties an opportunity to comment on and rebut that evidence. HUD has never disclosed the evidence underlying its proposed charges, and the restricted discovery that HUD has permitted is not a substitute for disclosure by the agency. Given the complexity of the procedures employed by HUD, which, with the aid of Arthur Andersen & Co. and discovery, MCLA is only now beginning to understand, the time permitted by HUD for affected parties to comment is inadequate.

A. Constitution Requires Disclosure
of Evidence

Rate-making agencies may not establish rates without revealing to those regulated the evidence on which the proposed rates are based and affording those persons an opportunity to review and comment upon that evidence. Ohio Bell Tel. Co. v. Ohio, 301 U.S. 292, 300

(1937) (telephone rates); cf. Delta Airlines, Inc. v. CAB, 442 F.2d 730 (D.C. Cir. 1970) (airline routes).

This elemental proposition is aptly summarized by the Court of Appeals for the District of Columbia Circuit in Jordan v. American Eagle Fire Ins. Co., 169 F.2d 281 (D.C. Cir. 1948). There the Court reviewed a decision, made without disclosure of the underlying evidence, by the Superintendent of Insurance for the District of Columbia that certain rates were "excessive." The Court stated:

"In respect to the public regulation of the rates of private concerns in peacetime, which is what we have here, the minimum requirements are clearly established.

" . . . [H]e who enters upon a business in which the whole public has a direct and positive interest, must contemplate that the regulation of that business may change from time to time. But to that concept the constitutional limitations of the due process clause must be added. Those limitations are both procedural and substantive. That the procedural necessities include the revelation of the evidence upon which the disputed order is based, an opportunity

to explore that evidence, and a conclusion based upon reason and not merely arbitrary, is soundly established a long line of cases. [Footnote omitted.]" (Id. at 288.)

B. HUD Has Not Disclosed
The Evidence

HUD has not complied with the due process requirement that it reveal the evidence upon which its proposed maximum rates are based.

The only general disclosure of the procedures it employed to develop the rates is a single paragraph in the preface to the proposed regulations. */

*/ The paragraph is:

"The maximum settlement charges to be fixed have been derived from cost data produced by a comprehensive survey of all HUD and VA loan closings during March of 1971. Statistical and economical analyses were performed on this data, and additional information concerning the nature of the services rendered for various charges was collected. Proposed maximums were then developed and reviewed by personnel of the HUD Insuring Offices in the areas in question. The maximums appearing in this issue of the Federal Register were then established". (37 Fed. Reg. 13185, July 4, 1972)

The identical paragraph, and no additional information, appeared in the preface to the VA proposed regulations (37 Fed. Reg. 17424, August 26, 1972).

The HUD/VA Report to the Congress on "Mortgage Settlement Costs" ^{*}/ states that the agencies planned to establish maximum rates but does not indicate what evidence they would consider or what procedures they would follow. ^{**}/ Secretary Romney had testified before House and Senate Committees ^{***}/ earlier this year that when HUD issued its proposed maximum rates "detailed justifications" of the recommended rates would be prepared by HUD for "each item" for which a maximum is proposed, but if such justifications have been prepared, they have not been made available to the affected parties.

^{*}/ Hereafter referred to as HUD/VA Report.

^{**}/ HUD/VA Report, pp. 119-20.

^{***}/ Hearings on Mortgage Settlement Costs before the Subcomm. on Housing and Urban Affairs of the Senate Comm. on Banking, Housing and Urban Affairs, 92d Cong., 2d Sess. at 15, 35 (hereafter Senate Mortgage Settlement Costs Hearings); Hearings on H.R. 13337 before the Subcomm. on Housing of the House Comm. on Banking and Currency, 92d Cong., 2d Sess. at 239 (hereafter House Hearings on H.R. 13337).

C. Permitting Discovery Is Not
A Substitute For Disclosure

The due process deficiency created by HUD's failure to disclose to all affected parties the procedures and evidence underlying the proposed rates is not offset by HUD's willingness to grant some of the discovery requests made by some of the affected parties.

MCLA, in cooperation with other interested attorney groups in the Washington, D.C. SMSA, has actively pursued discovery in an effort to understand how HUD arrived at the proposed maximum rates. MCLA believes that no other parties have pursued discovery more aggressively than it has and yet MCLA has only within the past week begun to gain some understanding of the complex, statistically based, computer assisted, procedures HUD used to determine the proposed rates. Even as to the procedures, MCLA is still not certain what some of the steps taken were and has no idea why many of the steps that it does know about were taken. Until we understand what all of the procedural steps were and why they were taken, we cannot question those steps, or comment on steps that were not taken, or point out the implications of the procedures.

Even MCLA's discovery was necessarily limited. Many documents that we requested could not be located, and others that could be located could not be disclosed to us. We are grateful to the HUD staff for its splendid cooperation in dealing with MCLA's representatives. Even though HUD staff members gave us the equivalent of several full days' of their time, we felt constrained not to ask additional questions because we had already burdened them substantially. Contacts with the staff would have been much shorter and more productive if they had followed HUD issuance of a statement detailing the data and procedures it employed.

D. MCLA Has Not Had An Adequate Opportunity To Comment

The time given by HUD to affected persons to comment on the proposed rates was inadequate, particularly in view of HUD's failure to disclose the basis for its decisions.

The proposed regulations appeared in the Federal Register on July 4, 1972. HUD required that any comments on the proposed regulations be submitted not

later than July 31, 1972. Then, on August 1, 1972, HUD extended the time for comments to August 31. Finally, on September 1, HUD extended the comment period to October 15.

MCLA served HUD with a request for production of documents underlying the proposed rates on August 7. By letter dated August 25, HUD responded to the request. A meeting of MCLA and HUD representatives was held on September 5, at which time MCLA learned that the proposed rates for the Washington, D.C. SMSA were derived in substantial part from statistical analyses of data from Montana and other states. It was then apparent to MCLA that -- in the absence of a detailed explanation by HUD of the procedures used to develop the maximum rates -- it would be necessary for MCLA to retain a statistics consultant simply to explain to MCLA the procedures HUD followed in developing the Washington, D.C. SMSA rates.

Within a short time, we retained Arthur Andersen & Co. Arthur Andersen representatives commenced work during the week of September 18 and worked with HUD personnel and HUD documents during the week of September 25 to learn the steps followed by HUD in developing the proposed

rates. The effort was only partially successful since many of the documents, as noted, could not be located. We received a draft report from Arthur Andersen on October 5, and only since then have we begun to gain some understanding of the Byzantine procedures HUD used in developing the proposed rates. We have not had an opportunity, as noted, to understand what all of the steps taken by HUD were, or why most of them were taken, or what the implications of the HUD procedures are. Such an opportunity is required by due process (Davis, Administrative Law § 8.08 at 546 (1958)).

The situation with respect to the VA is even more critical. MCLA, on September 19, requested that VA make available to it documents underlying the VA's proposed regulations. The VA responded to that request by letter dated October 10. A carton of documents was made available to us on Friday, October 13. We have not had an opportunity to review those documents.

E. Comments Filed Confirm Lack
Of Opportunity

The comments filed in these dockets to date provide ample evidence that HUD has failed to furnish affected parties with a meaningful opportunity to comment on the proposed regulations. To date, HUD has received more than 800 comments. That is an extraordinary number of comments, and the volume underscores the concern of affected parties about the proposed rates. However, most of the comments state only that the rates would be confiscatory. Affected parties are not in a position to provide critical comments or useful information because they do not understand how the rates were determined and, accordingly, do not know what information, if any, HUD would find useful.

II. HUD Has Developed Rates For Services
Without Considering The Cost Of
Providing The Services

Summary. Due process requires that rate-making agencies, such as HUD, establish rates on the basis of operating cost data of the persons affected. A Senate Committee has directed that HUD establish maximums based on the "actual cost" of providing the services, and Secretary Romney has indicated that HUD would base its maximums on such costs. In fact, HUD did not consider any actual costs of furnishing services in deciding what maximum charges for such services should be. As developed in Part III, HUD's maximums for the Washington, D.C. SMSA were developed by fiat. HUD decided that if services could be provided in Bozeman County, Montana, for "x" they could be provided anywhere in the country for "x." HUD's finding that charges are "excessive" in the six geographic areas is unsupported unless the word means "higher than in some other locations."

A. Constitution Requires Consideration
Of Cost-of-Performance Data

HUD is without power simply to decree that charges will be set at any level without taking into account the cost of providing the services.

As the Supreme Court stated in Permian Basin Area Rate Cases, 390 U.S. 747, 769 (1968):

"It is, however, plain that the 'power to regulate is not a power to destroy,' . . . and that maximum rates must be calculated for a regulated class in conformity with the pertinent constitutional limitations."

One of the pertinent constitutional limitations, according to the Court, is that while an agency may, under certain circumstances, set rates for a regulated class, the agency must have before it cost evidence representative of the regulated class:

"This Court has repeatedly recognized that legislatures and administrative agencies may calculate rates for a regulated class without first evaluating the separate financial position of each member of the class; it has been thought to be sufficient if the agency has before it representative evidence, ample in quantity to measure with appropriate precision the financial and other requirements of the

pertinent parties. See Tagg Bros. v. United States, supra; Acker v. United States, 298 U.S. 426; United States v. Corrick, 298 U.S. 435. Compare New England Divisions Case, 261 U.S. 184, 196-199; United States v. Abilene & S. R. Co., 265 U.S. 274, 290-291; New York v. United States, 331 U.S. 284; Chicago & N.W.R. Co. v. A.T. & S.F.R. Co., 387 U.S. 326, 341."

In computing the costs of performance, agencies must take into account the operating and other expenses of the persons providing the services. Smyth v. Ames, 169 U.S. 466, 546-47 (1898); Jordan v. American Eagle Fire Ins. Co., supra, at 289. None of this cost information was considered by HUD.

B. Senate Committee Wants HUD To Consider Costs

HUD's actions in developing proposed maximum rates without considering the costs of furnishing the services is inconsistent with the views of the Senate Banking, Housing and Urban Affairs Committee.^{*} That Committee stated:

^{*}/ In addition, we believe that, if Section 701 of the Emergency Home Finance Act of 1970 is to be read as authorizing HUD to set maximums, the statutory language and pertinent legislative history require that HUD consider actual costs in determining maximums.

"In determining whether a charge is reasonable, the Secretary should consider the actual cost incurred in providing the service and the extent to which the cost may already be covered elsewhere in the settlement transaction."

* /

C. Secretary Romney Has Indicated
HUD Would Consider Costs

On a number of occasions, Secretary Romney has stated that HUD was concerned about "abuses" in charging for settlement services. Examples of abuses that have been mentioned in Congressional hearings are kickbacks, payments for services not rendered, double payment for services, and "inflated profits" on services. The Secretary has indicated that HUD recognized that charges would be high in many areas, even after maximums were imposed, because record-keeping systems in many jurisdictions created inefficiencies that resulted in high charges.

* / S. Rep. No. 92-647, 92d Cong. 2d Sess. 71
(1972) (emphasis added).

The Secretary has pointed out that the high cost of settlement services stems "in no small part" from the basic inefficiencies in the existing systems of conveying, recording and insuring validity of title to parcels of real estate, ^{*}/ and that the proposed HUD maximums would reduce settlement costs "only to a level that still exacts the price of inefficient conveying systems." ^{**}/ However, HUD made no effort to determine what the cost of providing services is in any area, such as the State of Maryland, plagued by an inefficient conveyancing system.

The Secretary has also said that in setting maximums HUD is attempting to deal with "abuses":

"Our objective is to eliminate abuses, it is not to stop people [from] making legitimate charges for legitimate service." ^{***}/

^{*}/ House Hearings on H.R. 13337, p. 21.

^{**}/ Id. at 23.

^{***}/ Senate Mortgage Settlement Costs Hearings, p. 33.

However, HUD has not developed any evidence that would tend to show whether any abuse is occurring in any jurisdiction in the United States.

The Secretary has also recognized that maximum charges should be based on the actual cost of providing the services. One of HUD's principal conclusions about settlement charges is that they "often are not based on factors related to the cost of providing the services." ^{*/} In response to a question put by Representative St. Germain, the Secretary stated:

"We intend to establish allowable maximum costs for title insurance by taking the settlement cost data from our March 1971 survey and by comparing this data with whatever data we are able to obtain as to the actual cost of conducting a title insurance business. . . . Using this approach, we believe we can fairly establish maximums for each service performed at settlement" ^{**/}

^{*/} House Hearings on H.R. 13337, p. 22.

^{**/} Id. at 298 (emphasis added).

And, responding to a question by Representative Barrett concerning possible HUD regulation of real estate brokers' commissions, Secretary Romney stated:

"It is our plan to examine the economic conditions in each area where we are setting maximum settlement costs. . . . We will . . . made a determination of a reasonable charge which allows brokers to earn a reasonable profit." */

Despite the Secretary's concern that the maximums be based on the "actual cost" of providing the service, no cost data was gathered by HUD.

D. HUD Did Not Consider
Cost-of-Performance Data

HUD has, to our knowledge, no information whatsoever about the actual costs of providing the services covered by its regulations.

HUD states, in the preface to the proposed regulations, that proposed maximum rates were circulated to HUD field offices for comment in advance of publication in the Federal Register. Some of those

*/ Id. at 301.

field offices may have contacted affected persons to learn their views about the proposed maximums. We do not know whether any affected person was consulted about the proposed maximums for the Washington, D.C. SMSA. ^{*}/

The preface to the proposed regulations also states that HUD collected "information concerning the nature of the services rendered for various charges." In requesting documents underlying the proposed maximums, MCLA asked that HUD disclose the nature of that "information." HUD's response referred to certain published materials, some of which was not published until after the maximums had been proposed, and none of which deals with the actual costs of furnishing the services.

^{*}/ HUD had stated in 1970 that it would not promulgate any "standards" until it had had "full consultation with lenders, attorneys and other parties involved" about the proposed standards. 116 Cong. Rec. H 6033 (daily ed. June 25, 1970). Such consultation apparently never occurred.

None of the factors in the equation HUD used to establish the maximums, discussed below, bears directly and specifically on the cost of performance in any jurisdiction.

E. HUD's Finding That Charges Are
"Excessive" In The Washington, D.C.
SMSA Is Unsupported

Both HUD and VA state in the preface to their proposed regulations that they have found that "excessive" charges are being collected from buyers and sellers in connection with FHA and VA transactions.

There can, however, be no finding that settlement costs are "excessive" in any jurisdiction if the term excessive is to be understood in its ordinary sense. As stated, HUD has no data as to the actual cost of providing services and thus could make no finding as to whether any person or group rendering services was charging amounts for those services that resulted in compensation that was reasonable, "excessive" or too low. By "excessive", HUD can mean nothing more than that the charges in the six selected cities are "higher" than they are in some other locations.

While MCLA has not commissioned an economic study of the type to be submitted to HUD as an attachment to the comments of the Northern Virginia Lawyers Association, MCLA is confident that the rates proposed by HUD for the Montgomery County, Maryland, would be confiscatory. MCLA's members could not perform the settlement services they now perform at the rates proposed.

III. HUD's Proposed Rates Were Established Arbitrarily

Summary. Although we are only beginning to understand the procedures used by HUD to develop the proposed rates, we have learned enough about them to know they were developed arbitrarily.

In this Part, we describe the procedures as we understand them. There are serious problems with every step in the procedures employed by HUD.

HUD could have developed maximums (assuming Congress authorized it to) for a given jurisdiction by holding hearings and learning what the practices, problems, and costs were with respect to providing services in that jurisdiction. Instead, HUD proceeded to develop a mathematical equation which would permit it to "determine" maximums for any jurisdiction in a matter of seconds. The equation is nothing more than mathematical gimmickry that masks what, absent the mathematics, would immediately be perceived to be arbitrary rate-making.

A. HUD's Basic Data

Summary. The data source for the entire HUD is valueless for rate-making purposes. HUD relied exclusively on settlement sheets, for its data, and the shortcomings of such sheets as a data source are well known. No effort was made to determine accurately what services were rendered and for what charges. Accurate and reliable data could have been gathered, but was not.

Description. The starting point for HUD's statistical study was the 50,000 FHA and VA transactions that occurred throughout the United States in March 1971. ^{*}/ HUD studied some 7,000 transactions, which was one transaction in ten for some jurisdictions and a greater percentage for others. ^{**}/ Local HUD offices were instructed to take HUD "coding sheets" and to add to those sheets the information appearing on the buyer and seller settlement sheets for transactions sampled.

^{*}/ The HUD/VA Report (p. 71) states there were 50,605 cases in the survey. The Report also shows (p. 99) that there were 57,073 cases in March 1971. We do not know the reason for the different figures.

^{**}/ We do not know what jurisdictions were in the latter category.

Comment. Buyer and seller settlement sheets are not a satisfactory data source. These sheets are prepared by title companies, lenders, and others, and there is no uniformity of format. The individual line item entries that appear on any sheet may differ from those on sheets prepared by any other party. Moreover, there normally is no need correctly to identify the service for which a charge is made or to describe the services in detail. Thus, an attorney may perform a variety of services in a given case, including preparation of documents, searching the title, rendering a title opinion, conducting the closing, and furnishing legal advice to the buyer and seller. The settlement sheet may show a single charge for all of these services. That charge may be listed under the heading "preparation of documents" or any other line item. So far as we are aware, HUD and VA issued no instructions asking that the settlement sheets prepared in March 1971 be prepared with any greater than normal accuracy.

HUD recognizes the limitations imposed by the settlement sheets as a source of data. The HUD/VA Report states:

"There was, of course, significant variation in the settlement statements received; consequently, in compiling the data, considerable interpretation was involved."

(P. 71) (Emphasis added.)

If HUD had intended to use settlement sheets for developing the proposed maximums, it would have been in order for HUD to have issued instructions that special settlement sheets were to be used for March 1971 closings. The use of such sheets could have assured detailed, correct disclosure of all services and charges, and thus a much more reliable data base from which HUD could begin. Such special sheets could, for example, have required that charges by attorneys who represented only the buyer or seller be listed separately so they could be distinguished from charges by the settlement attorneys. The proposed HUD maximums do not apply to the former category of attorneys' fees, but on the settlement sheets used by HUD such charges cannot be identified. Special settlement sheets could also have required disclosure of the method used to establish title in each transaction. That information is fundamental to HUD's approach, and is one

of the two or three most important factors in HUD's equation for determining maximum rates. HUD did not have that information and had to make educated "guesses" as to what method was used in each case it studied.

B. A Basic Premise

Summary and Comment. A basic premise of the procedure followed by HUD is that title-related costs are a function of purchase price. That should be true because title insurance, a major component of title-related charges, is a function of purchase price.^{*/}

However, the HUD regulations are directed principally at title examination charges, which is another component of title-related charges. It is not clear that title examination charges are a function of price, and HUD did not check to determine whether it was or not. If it was not, HUD, in effect, acknowledges that its entire procedure would be invalidated.^{**/}

^{*/} We are advised that HUD ran a number of covariance analyses, but we have not reviewed the results to confirm whether the correlation between title-related costs and purchase price was significant.

^{**/} As the HUD/VA Report states:

"Without this technique [treating title costs as a function of price], it would have been necessary to examine costs by individual price class. Sufficient data for this kind of analysis were not available for any individual price classes." (P. 79)

C. HUD's National Model

Summary. HUD's next step was to select, through statistical gimmickry and several false assumptions, fourteen states in which title-related charges were extremely low. It subsequently used the cases from those states to determine, in effect, that charges should be no higher in any other state.

Description and Comment. Once HUD had its code sheets, it added, for each state separately, the "purchase price" for all transactions and the "title-related charges" for all transactions and determined what percentage the latter was of the former. The percentages which are set out in the column "Y(actual)" in Appendix A, ranged from 0.23% for North Dakota to 2.39% for Pennsylvania.

It is important to note that for purposes of calculating these percentages that HUD defined "title-related charges" as the sum of the following entries on the code sheets: (1) title examination, (2) title insurance, (3) preparation of documents, (4) closing fee, (5) escrow fee, (6) attorneys' fee, and (7) other closing costs. The definition of "title-related charges" was changed

in a subsequent step in HUD's procedures, as noted below.

HUD then took the fifty figures (one percentage figure for each state) and attempted to identify factors that statistically correlated with the differences among the figures. (That is not to say that the factors "explained" the differences, merely that there was a statistical correlation.) ^{*}/ HUD found that the following factors correlated with the fifty figures:

1. Whether the principal method of establishing title in the state was personal search by an attorney coupled with title insurance. ^{**}/

^{*}/ HUD/VA Report, p. 104:

"The . . . method used . . . did not necessarily indicate underlying causes."

^{**}/ HUD's determination as to which method of title proof was predominant in any state was apparently based in substantial part on the characterizations in John C. Payne's article, "Ancillary Costs in the Purchase of Homes," 35 Mo. L. Rev. 455, 502-510 (1970). Payne's article is the first effort to gather data on closing costs. After noting that the article is based on 483 useable returns to a mailed questionnaire, Payne states:

"Admittedly the coverage is so thin that any findings are highly tentative." Id. at 459. /

2. The state's average population, per square mile. */
3. The percentage of the state's population living in urban areas. **/
4. Whether the state has a marketable title law. ***
5. The percentage of cases for the state for which the code sheets show an "escrow fee" was charged. ****/
6. The percentage of cases for the state for which the code sheets show that there were charges for both "attorneys' fees" and "title insurance." *****/
7. The percentage of cases for the state for which the code sheets show there were charges for both "title examination" and "title insurance." *****/

*/ This information is based on the 1960 Census of Population, Volume I, Part A.

**/ This information is based on the 1960 Census of Population, Volume I, Part A.

*** According to the HUD/VA Report (p. 49, n.44), there are only fifteen states that have marketable title acts.

****/ These percentages are derived from the code sheets.

*****/ These percentages are derived from the code sheets.

*****/ These percentages are derived from the code sheets.

Statistically, the seven factors listed above correlate with 73.6% of the differences among the fifty figures. HUD tried a few other factors and found that they did not correlate significantly. ^{*}/

In general, what the correlating factors show is that title-related charges tend to be higher in urban areas than in rural areas, tend to be higher in those states in which title is established through a personal search of the title by an attorney coupled with title insurance than elsewhere, and tend to be lower in those states that have enacted marketable title laws than in those that have not. These tendencies are well recognized.

^{*}/ We have not been given access to the documents that would show how well these factors correlated. The factors were: (1) state wage levels, (2) growth of state population between specified years, (3) the percentage of cases for the state for which the code sheets show that "title insurance" was charged, (4) the percentage of cases for the state for which the code sheets show that a "closing fee" was charged, and (5) whether the dominant form of establishing title in the state was by a means other than personal search by an attorney coupled with title insurance.

We are advised that HUD assumed at this point that "abuses" (such as kickbacks, charges for service not rendered, double charges for services and inflated profits) in settlement services and charges accounted for the 26.4% of the differences among the fifty state figures that were not accounted for by the seven factors noted above. This assumption is fundamental to HUD's approach, and is completely unjustified.

A related, and equally unjustified assumption, was made. That assumption was that the seven factors not only correlated with but "explained" the differences. HUD thus assumed that if it looked at those seven factors for any state it could tell what percentage title-related charges "should be" of purchase price if there were no "abuses" in the state. HUD did that and the resulting figures are shown in column "Y(calculated)" in Appendix A.

HUD then compared, for each state, the actual percentage with the percentage HUD "calculated" using the seven factors. As would be expected, for some

states the "calculated" percentage was above the actual percentage, in others it was below the actual percentage, and in some it was close to the actual percentage.

If HUD's assumptions were correct, it would follow that, in those states for which the actual and "calculated" percentages were approximately the same, "abuses" would not be present.

It would also follow from HUD's assumptions that, in those states in which the actual percentage was higher than the "calculated" percentage, "abuses" would be present (and, indeed, would "explain" why the actual charges were higher than those "calculated"). There would, thus, be "abuses" occurring in the twenty-three states for which a negative percentage is shown in the "Percentage" column in Appendix A. (The greater the negative percentage the worse the "abuse.") Based on HUD's calculations, Alaska, Maine, North Dakota, and South Dakota are among the six states in which the worst "abuses" are occurring. HUD has not proposed to regulate rates in those states.

It would also follow from HUD's assumptions that in those states in which the actual percentage

was lower than the "calculated" percentage, not only are there no "abuses" but the charges being made for title services are depressed and could be increased. Thus, title-related charges could be increased in the twenty-seven states for which a positive percentage is shown in the "Percentage" column in Appendix A. (The greater the positive percentage the more charges are depressed.)

Based on HUD's calculations, title charges could be increased by 45% in Hawaii, and by at least 20% in Colorado, Kentucky, Nebraska, Nevada, Rhode Island, and Wisconsin. HUD also calculates that title-related charges could be increased in Maryland by 2.5%.

HUD's next step was to decide what states it would select for further study of the individual transactions within those states. HUD selected fourteen of the seventeen states for which the level of title-related charges was depressed to the greatest extent (i.e., for which the actual percentage was lower than the calculated percentage by the greatest amount). There

is no rational explanation for this selection. HUD could have selected states for which the seven factors tended best, in HUD's view, to "explain" the actual percentages. Those would have been the states for which the calculated percentage came closest to the actual percentage. Maryland and Virginia would have been included in such a selection. Instead, HUD selected states for which the factors failed, by a wide margin, to "explain" the level of title-related charges.

The fourteen states selected for study by HUD were: (1) Alabama, (2) Colorado, (3) Kentucky, (4) Minnesota, (5) Missouri, (6) Montana, (7) Nebraska, (8) Nevada, (9) New Hampshire, (10) Ohio, (11) Rhode Island, (12) Tennessee, (13) Wisconsin, and (14) Wyoming. ^{*}/

^{*}/ The actual percentage for these states was below the calculated percentage by anywhere from 15% to 28%, as shown in Appendix A.

HUD elected not to study Hawaii, Idaho and Massachusetts, which were among the fourteen states for which the calculated percentage exceeded the actual percentage by the greatest amount. Those states were dropped, and the states of Alabama, Ohio, and Tennessee were substituted. The reasons for these actions are not clear.

A memorandum identified to us as a briefing memorandum for Secretary Romney explaining the selection of the fourteen states, says:

"We did not want to use only low-cost states. . . ."

However, that is precisely what HUD did. The states are not the fourteen lowest in terms of absolute ranking by actual percentage (of title-related charges of purchase price), ^{*}/ but they are among the very lowest when ranked by the predominant method of title proof. There are five principal methods of title proof in the United States. ^{**}/ They are:

^{*}/ See HUD/VA Report, p. 99, for that ranking.

^{**}/ HUD/VA Report, p. 36.

1. Title insurance alone (with the title search being done by the title company) ("T"; 18 states);
2. Abstract (prepared by an abstractor) coupled with title insurance ("AT"; 10 states);
3. Personal search (usually by an attorney) coupled with title insurance ("PT"; 14 states);
4. Personal search alone (by an attorney) ("P"; 5 states); and
5. Abstract (by an abstractor) ("A"; 3 states).

HUD selected five of the eighteen T states in the country. Their rankings among the T states in terms of actual percentage (of title-related charges of purchase price) were:

Wyoming - lowest
 Colorado - second lowest
 Hawaii - third lowest (excluded by HUD)
 Idaho - fourth lowest (excluded by HUD)
 Montana - fifth lowest
 Rhode Island - tenth lowest
 Nevada - eleventh lowest

HUD selected four of the ten AT states.

Their rankings were:

Nebraska - lowest
 Minnesota - third lowest
 Wisconsin - fourth lowest
 Missouri - fifth lowest

HUD selected four of the fourteen PT states. Their rankings were:

Kentucky - lowest
Alabama - second lowest
Tennessee - third lowest
Ohio - sixth lowest

HUD selected none of the three A states, and one of the five P states:

New Hampshire - lowest

D. The 1347 Cases

Summary. HUD then took the 1550 cases in the fourteen selected states, eliminated some 200 of them, and attempted to identify factors that correlated with the differences in the 1347 cases being studied. The result was that HUD was able to identify factors that correlated with only 48% of the differences -- a statistically unsatisfactory correlation. Nevertheless, HUD, in the next step, used those factors to set maximum rates. The unrepresentativeness of the cases studied by HUD was underscored by the fact that title-related charges for the urban transactions were lower than those for the rural transactions.

Description. In the fourteen states selected by HUD there were some 1550 cases. HUD then eliminated some 200 cases that occurred in Cleveland, in counties around St. Louis and at unspecified other locations. ^{*}/ The basis for these exclusions is not clear.

HUD then took the remaining cases (approximately 1347) and attempted to identify factors that would correlate with the differences in title-related charges among those individual cases. For the purpose of this procedure, HUD redefined "title-related charges" to consist of (1) title examination, (2) title insurance, (3) closing fees, (4) escrow fees, and (5) attorneys' fees. The redefinition resulted in the exclusion of charges for (1) preparation of documents and (2) other closing costs. (This exclusion is particularly significant later since HUD includes services covered by

^{*}/ We have not seen documents showing how many transactions there were initially or how many were excluded.

those charges in the maximum rate although it does not take those charges into account in setting the rate.) Why "title-related charges" was redefined is not clear.

The factors that HUD identified as correlating with some of the differences among the 1347 cases were the following:

1. Whether title to the particular property was established through personal search coupled with title insurance.
2. Whether title to the particular property was established through an abstract coupled with title insurance.
3. Whether the laws of the state in which the property was situated facilitated title search or not.
4. The 1970 average wages and salaries for finance, insurance, and real estate personnel for the county in which the property was located.
5. Whether the title insurance company issued both a lenders and owners title insurance policy.

6. Whether the title company conducted its own search of the title to the particular property in its own title plant.

7. A factor for title insurance: the sale price, if both a lenders and owners insurance policies were issued, or the amount of the mortgage, if only a lenders policy was issued.

8. Whether the property was new or old.

Comment. These eight factors did not correlate well with the differences among the 1347 cases. HUD grouped the cases in various combinations, but the factors correlated with only 35% to 48% of the differences among the cases in the HUD groupings.

There are serious questions about application of most of the eight factors:

1. Factors 1, 2 and 6 all deal with the method used to establish title in the individual case. However, the code sheets for the individual cases do not show what method was used to establish title. As we understand it, the determination as to what method was used in each case

was made by the HUD staff on the basis of what it understood to be the method predominantly used in the state in which the transactions occurred, coupled with any information that the figures on the code sheet might provide. Given the significance of these factors in HUD's determination as to what maximum rates should be, HUD should have determined the presence or absence of these factors at the time the transactions occurred and should not have attempted to make educated guesses as to what method was used to establish title in each case.

2. Factors 5 and 7 attempt to identify the amount of the title insurance premium charged in each case. It would have made more sense for HUD simply to have eliminated the title insurance premium in each case outright.

3. Factor 3 deals with the extent to which the laws of the state in which the transaction occurred make proof of title easy or difficult. HUD personnel reviewed the real property laws of the fifty states and

assigned each state a rating of from zero (for least effective) to 1.0 (for most effective in simplifying proof of title). These ratings are admittedly subjective, and are based, so far as we have determined, on the statute books themselves without consideration as to whether the laws in fact simplify proof of title in the state.

4. The other two factors are relatively unimportant. One of them, factor 4 (wage data), is of doubtful validity. The wage data used is a county average wage for a broad category of jobs, and data for any persons whose wages would be relevant, if there are such persons in a county, would be submerged in the average. ^{*}/ This could result in substantial distortions. We note, for example, that the average for Prince Georges County, Maryland, is lower than the average of

^{*}/ The category is "finance, insurance and real estate." See OMB, Standard Industrial Classification Manual 277 (1972). The figures for wage data are from an unpublished report for 1970 of the Department of Commerce.

all but one of the counties in Montana studied by HUD.^{*/}

As we see later, this would tend to cause HUD to conclude that settlement charges should be lower in Prince Georges County than in the Montana counties.

Moreover, we would assume that HUD would be deeply troubled by the implications of the factors that were tried and that failed to explain differences among the 1347 cases. We understand that HUD tried a number of factors related to population (such as population per square mile, population growth, and percentage of population in urban areas), but without satisfactory results. It is a cardinal understanding of real estate practice that settlement charges are higher in urban areas than in rural areas. One of the principal findings in the HUD/VA Report was that

^{*/} Some of the averages used by HUD, including the average for Montgomery County, Maryland, must by law be kept confidential to avoid the possibility of disclosing the wages paid by an individual employer.

"the settlement cost problem is more complex and costs tend to be higher in metropolitan than in nonmetropolitan areas." (P. 4)

Secretary Romney has made that point in his Congressional appearances. Yet, we are advised that when the 1347 cases were studied to confirm that axiom it was found that, for the 1347 cases, the reverse was the case. Title-related charges in the fourteen selected states were lower for transactions occurring in urban areas than in rural areas. This result alone suggests that the 1347 cases are not a fair sample from which to be making projections as to what charges should be in any other jurisdiction.

E. The HUD Equation

Summary. Using the eight factors referred to in Section D, HUD generated an "equation" that -- it claims -- can be used to prescribe the maximum title-related charges to be allowed in any jurisdiction.

Description. HUD's next step was to display the eight factors (see pages 43-44, supra) that resulted in the 35%-48% correlation among the 1347 cases

as an equation. To determine the maximum charges for any jurisdiction it is necessary -- according to HUD -- merely to "plug in" eight facts for the jurisdiction. The maximum is available in seconds. The following is the equation; "F₁" through "F₈" are the eight facts, ^{*/} which, when known, enable HUD to determine "Y," which is the maximum title-related charge for the jurisdiction:

$$Y = \$72.6 + \$58.0 \times F_1 - \$67.2 \times F_3 + \$0.00832 \times F_4 + \$7.8 \times F_5 - \$17.9 \times F_6 + \$0.00238 \times F_7 + \$14.6 \times F_8. \quad **/$$

As applied to the Maryland-Virginia areas within the Washington, D.C. SMSA, according to HUD work papers, the equation is as follows:

^{*/} HUD excluded, for reasons unknown to us, factor 2.

^{**/} As applied to an individual transaction, factors 1, 2, 5, 6 and 8 will be either present or absent. However, as applied to all of the transactions in an entire jurisdiction, the factors may be present to some extent but not in every case. Nevertheless, as applied to the six selected SMSAs, HUD apparently determined that the factor would be 1.0 in each case if the factor were present in a substantial percentage of the cases and would be 0.0 otherwise.

$$\begin{aligned}
 Y &= \$72.6 + \$58.0 \times 1.0 - \$67.2 \times 0.2 + \\
 &\$0.00832 \times 7,000 + \$7.8 \times 1.0 - \$17.9 \times 0.0 + \$0.00238 \\
 &\times 29,100 + \$14.6 \times 1.0 \\
 Y &= \$267
 \end{aligned}$$

For Maryland-Virginia, HUD then determined how much should be allowed for title insurance and for a closing fee and deducted those amounts from the \$267 produced by the equation; whatever remained HUD allocated to title examination. For reasons that are not clear, HUD assumed that the rate that should be permitted for title insurance was \$3 per thousand dollars. The average purchase price of the Maryland-Virginia properties covered by the study was \$29,000; at \$3 per \$1,000, the title insurance premium would be some \$87. HUD found that \$50 was the customary charge for closing fees in the area. Subtracting \$87 for title insurance and \$50 for closing fee from the \$267 generated by the HUD equation, leaves \$130. The proposed regulations permit \$130 for title examination in the Maryland and Virginia counties.

F. Additional Observations

1. We have not made the calculations but believe that the HUD equation, if used to set maximums for the fourteen selected states themselves, would result in maximums that would be exceeded by approximately half of the 1347 transactions used to develop the equation.

2. We believe that the HUD equation, if used to develop maximums for every part of the country, would result in maximums that would have been exceeded by the vast majority of all HUD and VA transactions for March 1971. We believe that the only transactions that would be below the maximums projected by the equation would be the lowest cost transactions occurring in the lowest cost states. That result follows from the fact that only low cost transactions were "studied" to establish the equation that establishes the maximums.

3. The equation developed by HUD obviously had a great deal of administrative appeal. To set maximum rates for a state, it would not be necessary for HUD to know anything about the real estate practices

in that state. HUD need know only (i) whether PT, AT or T is the predominant method of establishing title in the state, (ii) what rating it has given to the state's real estate laws, (iii) the approximate average price of homes sold, (iv) the average county wage for finance, insurance and real estate personnel, and (v) whether most of the title insurance policies covered both the lender and the owner. ^{*}/

4. Although Arthur Andersen personnel were attempting only to understand HUD's procedures, they discovered a number of errors in the treatment of the data. That suggests that the entire HUD procedure should be re-examined for accuracy.

5. The equation for the Washington, D.C. part of the Washington, D.C. SMSA determined that the maximum title examination charges should be at a given level, but HUD increased that level substantially. We do not

^{*}/ We understand that HUD eliminated the old-new property factor (factor 8, page 44) by assuming that all property was old.

know why that was done in the case of Washington, D.C. and not in the case of the Maryland and Virginia parts of the Washington, D.C. SMSA.

6. HUD used two different procedures in setting maximums for individual services. For some services, such as field survey, pest and fungus inspection, closing and, possibly even title insurance, HUD seems to have adopted the "customary" charge as the level of the maximum. It may be that the only service for which HUD used a different measure was title examination.

7. Another aspect of the arbitrariness with which these maximum rates were devised is seen in HUD's handling of charges under the categories (i) preparation of documents and (ii) other closing fees. The proposed maximums are intended to cover all services for which preparation of documents and other closing fees have, in the past, been charged. However, HUD excluded those fees in developing its equation, even though both kinds of fees were actually charged in connection with the 1347 used by HUD to develop its equation. Fees for preparation of

documents were commonly charged in those cases. Moreover, many of those charges exceeded \$50; the highest was \$195. In those cases, and perhaps in others, what is shown on the code sheets as a fee for preparation of documents is probably a fee for title examination, and those fees were excluded from HUD's computations.

8. In using the equation to establish maximums, HUD has again made the error of assuming that factors that correlate also "explain."

9. HUD procedures resulted in the development of two different, inconsistent sets of what HUD regards as "explanations" for the levels of title-related charges. One set was developed for the "national model," another for the 1347 cases.

IV. HUD Should Hold Hearings Before
Establishing Maximum Rates

Summary. HUD is required to hold hearings before establishing maximum rates. Even if HUD were not required to do so, HUD should hold hearings to gather information essential to meaningful regulation.

A. A Hearing Is Required

HUD is required by the Constitution and the Administrative Procedure Act to hold hearings before establishing maximum rates for settlement services. See Permian Basin Area Rate Cases, 390 U.S. 747 (1968); Bi-Metallic Inv. Co. v. State Board of Equalization, 239 U.S. 441 (1915); Londoner v. Denver, 210 U.S. 373 (1908); Walter Holm & Co. v. Hardin, 449 F.2d 1009, 1015 (D.C. Cir. 1971).

At a hearing, representatives of MCLA would present evidence as to the settlement services they render, the direct costs of furnishing those services, and their risk experience in issuing title opinions on properties located in Montgomery County, Maryland.

B. A Hearing is Desirable Even
If Not Required

Even if HUD could establish maximum rates without a hearing, it should not do so.

At present, HUD does not have for any jurisdiction in the United States data about the costs of furnishing the settlement services. Nor does it have adequate information about the specific steps that attorneys must take in searching titles or in performing other services in many jurisdictions, including Montgomery County, Maryland. HUD must have this information before it can establish maximum rates. This information could be developed through the hearing process.

Secretary Romney has recognized that hearings might be required before HUD could establish maximum rates:

"[I]f a thorough job is done . . . there will be no need for a public hearing to be held in all cases. . . .

"However, we would hold such hearings should we deem them helpful in particular cases, after evaluation [of] all written comments on proposed maximums." */

*/ Senate Mortgage Settlement Costs Hearings, p. 19.

We submit that a "thorough job" has not been done and that hearings are in order before HUD proceeds further.

V. Conclusion

In view of the foregoing, we urge that HUD and VA take the actions requested at pages four and five of these Comments.

Dated: October 15, 1972

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APPENDIX A

Page 1

State	Y(Actual)	Y(Calculated)	Percentage by which Y(Calculated) exceeds Y(Actual)
	<u>*/</u>	<u>**/</u>	<u>***/</u>
Alabama	1.23	1.47	16.24
Alaska	.9	.68	-33.57
Arizona	1.66	1.40	-17.99
Arkansas	1.15	1.04	-10.72
California	1.85	1.57	-18.04
Colorado	.69	.94	26.52
Connecticut	1	1.01	.16
Delaware	2.09	2.02	- 3.84
Florida	1.25	1.11	-12.76
Georgia	1.53	1.46	- 4.83
Hawaii	.7	1.29	45.42
Idaho	.77	.95	18.45
Illinois	.93	.93	4.22
Indiana	1.21	1.22	.48
Iowa	.95	.85	-12.64
Kansas	.92	.99	7.06
Kentucky	1.14	1.49	23.11
Louisiana	1.54	1.54	- .48
Maine	.92	.68	-36.67
Maryland	1.75	1.80	2.57
Massachusetts	1.1	1.33	16.71
Michigan	.82	.84	1.21
Minnesota	.67	.84	19.89
Mississippi	1.62	1.66	1.87
Missouri	1.07	1.19	10.08
Montana	.81	.99	17.73
Nebraska	.38	.50	22.79
Nevada	1.15	1.46	20.76
New Hampshire	.63	.78	19.15
New Jersey	2.02	1.82	-11.31
New Mexico	1.3	1.37	4.96
New York	2.24	1.56	-44.32
North Carolina	1.4	1.35	- 4.05
North Dakota	.32	.24	-37.06
Ohio	1.45	1.73	15.77
Oklahoma	1.2	1.22	.90

APPENDIX APage 2

<u>State</u>	<u>Y(Actual)</u>	<u>Y(Calculated)</u>	Percentage By Which Y(Calculated) Exceeds <u>Y(Actual)</u>
Oregon	1.05	1.05	- 2.92
Pennsylvania	2.39	1.70	-41.11
Rhode Island	1.08	1.46	25.81
South Carolina	1.43	1.42	- 1.10
South Dakota	.47	.34	-38.83
Tennessee	1.4	1.66	15.20
Texas	1.54	1.62	4.90
Utah	1.29	.88	-47.56
Vermont	.75	.54	-41.43
Virginia	1.7	1.60	- 6.77
Washington	1.47	1.27	-16.06
West Virginia	1.46	1.31	-11.55
Wisconsin	.69	.96	27.60
Wyoming	.6	.75	19.44

*/ This column shows the actual title-related charges that were made in all FHA and VA transactions occurring in March 1971 as a percentage of actual purchase price. The percentages appear in the HUD/VA Report, p. 99.

**/ This column shows title-related charges that HUD calculates should have been made for all FHA and VA transactions occurring in March 1971 as a percentage of actual purchase price.

***/ Figures may not check due to rounding.

REPORT ON REVIEW OF THE ANALYTIC METHODS
AND PROCEDURES USED BY U. S. DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT TO ESTABLISH
MAXIMUM FHA AND VA MORTGAGE SETTLEMENT CHARGES

OCTOBER, 1972

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WASHINGTON, D. C.

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Gentlemen:

As you requested, we have carried out a detailed review of selected aspects of the approach taken by the Department of Housing and Urban Development (HUD) to establish maximum title related settlement charges for FHA and VA mortgage closings. The purpose of our review was to provide you with a further understanding of the analytical methods and data sources referred to in the HUD/VA Report On Mortgage Settlement Costs dated January, 1972, as well as the procedures used to extend the statistical analysis to the recommended maximum title related settlement charges recorded in the Federal Register (Vol. 37, No. 129) of July 4, 1972.

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Enclosed herewith is our report of this review. The report is organized to coincide with the sequence of analytic stages followed by HUD. For each stage, we discuss the statistical procedures used, the nature and source of input data and related underlying assumptions supporting either the technique or data used. To accomplish this review, we dealt directly with Mr. Chester Foster of HUD, who was chiefly responsible for executing the analysis effort. To the extent these discussions raised any questions of interpretation or possible inconsistencies, these are pointed out in our report.

We would point out that at the time of our review, the documentation of work carried out by HUD was extremely informal and disorganized. The condition of the working papers did not permit us to validate every procedural detail and computation, particularly in light of the time constraints of our review. However, Mr. Foster was very cooperative and helpful in recreating the sequence of steps HUD went through to arrive at their recommendations, so we did manage to obtain information to carry out our work.

If you have any questions concerning the content of this report, we would be pleased to discuss them with you or any designees of your clients.

Very truly yours,

Arthur Andersen & Co.

Enclosure

REPORT ON REVIEW OF THE ANALYTIC METHODS
AND PROCEDURES USED BY U. S. DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT TO ESTABLISH
MAXIMUM FHA AND VA MORTGAGE SETTLEMENT CHARGES

Introduction

The July 4, 1972, issue of the Federal Register (Vol. 37, No. 129, pp. 13185-13188) contains a table of maximum FHA and VA mortgage settlement charges recommended by the Department of Housing and Urban Development (hereafter referred to as HUD). The process by which these recommendations were reached involved five basic steps:

1. Sampling of actual settlement cases in 50 states as a basis for collecting cost and related data associated with the mortgage closing and settlement process.
2. Statistical analysis of the basic data to identify those factors and practices which would serve to estimate expected total settlement cost.
3. Development of an econometric model of a state's average title related total settlement cost as a percent of the sales price or mortgage amount.
4. Development of a series of title related settlement cost estimating equations based on 14 selected states.
5. Conversion of the estimates derived from the foregoing equations to a recommended maximum settlement charge.

Our review focused on the data sources, analysis methods and procedures and the underlying assumptions relative to the aforementioned analysis process. Inasmuch as the

analysis was not fully described in the HUD/Veterans Administration (VA) Report on Mortgage Settlement Costs of January, 1972, nor contained in any other published document, much of our review effort was devoted to discussions with Mr. Chester Foster, Chief of HUD's Statistical Analysis and Research Branch, who had primary responsibility for carrying out the analysis. Additionally, we reviewed a portion of the original computer output to verify data and to obtain greater detail behind those figures appearing in the Federal Register.

The following four sections of this report present our findings for the five-step analysis process previously identified. The fourth and last section summarizes some of our overall observations which we feel are relevant to any total assessment of the reasonableness and adequacy of the analysis performed by HUD.

Sampling Procedures

The HUD/VA January, 1972, Report on Mortgage Settlement Costs contains some discussion of the procedure followed in sampling individual settlement cases from all 50 states plus the District of Columbia for the month of March, 1971. The specific data elements collected on each case are also identified, together with the data recording form and instructions.

The HUD/VA report does not clearly identify the total sample of cases actually used in the first stage of analysis. This sample was, in fact, approximately 7,000 cases or 14 percent of the 50,000 transactions of March, 1971, submitted to HUD and VA offices for insurance endorsements. HUD indicated that the sample was obtained as follows:

1. Every 10th incoming transaction during the month was selected. If the data on the selected case were incomplete, the VA offices would often take the next usable case. HUD offices, on the other hand, would track down the missing data for the originally selected case.
2. Small HUD or VA offices have a low total volume of cases. Therefore, HUD advised us that the "every 10th" procedure would not result in a sample of cases thought to be representative of those offices. Consequently, up to 50 percent of the March, 1971, transactions were selected in those offices.
3. Twelve metropolitan areas were selected for additional data analysis.⁽¹⁾ In these areas, from 40 to 100 percent of the incoming transactions were included in the sample.

These procedures do not constitute a truly random sample of March, 1971, cases. The heavier sampling in small offices and certain metropolitan counties could lead to a

(1) HUD/VA Report on Mortgage Settlement Costs, January, 1971, Appendix E.

disproportionate weight given to these cases. (The impact of this disproportionate sampling was not tested in any analysis work performed.) Furthermore, the differences in how the HUD and the VA offices dealt with incomplete data could have introduced unintentional statistical bias in the resultant sample. Another bias may have been created by the "considerable interpretation"⁽²⁾ cited by HUD in transferring the case data to the data recording forms.

A National Econometric Model of Average Settlement Costs

The HUD/VA report notes that "many items included in closing costs are computed on the basis of a percentage of sales price or mortgage amount."⁽³⁾ Accordingly, HUD carried out an analysis of covariance to verify this relationship. In other words, it was necessary to measure the effect of sales price or mortgage amount on those factors (independent variables) which, in turn, would be considered as affecting title related costs. On the basis that these determinations passed generally accepted statistical significance tests, HUD proceeded to develop an econometric model using a step-wise multiple regression analysis.⁽⁴⁾ This model established the

(2) Ibid, p. 71.

(3) HUD/VA, Op. Cit., p. 78.

(4) This is a standard multiple regression technique used to introduce additional independent variables, one at a time, and to accept or reject each variable based on its contribution to explaining the variations in the dependent variable, i.e., title related costs.

relationship of average title related costs as a percentage of sales price/mortgage amount to a series of variables whose changes in value would be expected to have a direct effect on average title related costs.

In developing this model, cost elements and other data collected on each case were averaged for each of the 50 states plus the District of Columbia. This averaging resulted in 51 observations for every variable, of which 50 were used in the analysis (the District of Columbia was excluded). The averaging also removed the variations in costs within a state.

The cost elements comprising title related costs were taken directly from the coded input sheets for the original 7,000 sample. These were:

1. Title Examination.
2. Title Insurance.
3. Preparation of Documents.
4. Closing Fee.
5. Escrow Fees.
6. Attorney Fees.
7. Other Closing Costs.

The final version of the model was as follows:

$$Y_i = .068\% + .387\%(X_{1i}) + .000441\%(X_{2i}) + .0115(X_{3i}) \\ - .244\%(X_{4i}) + .00471(X_{5i}) + .00512(X_{6i}) + .00405(X_{7i})$$

where, for the ith state:

Y_i = Estimated average title related costs as a percentage of sales price/mortgage amount.

X_{1i} = 1... if the predominant method of establishing title is a personal search with title insurance; 0... if otherwise.

X_{2i} = Population per square mile.

X_{3i} = Percentage of the state's total population living in urban areas.

X_{4i} = 1... if the state has marketable title laws; 0... if otherwise.

X_{5i} = Percentage of cases in the state that reports escrow fee charges.

X_{6i} = Percentage of cases in the state that reports a charge for both attorney's fees and title insurance.

X_{7i} = Percentage of cases reporting a charge for both title examination and title insurance.

The impact of each variable on the average title related costs is reflected by the plus or minus sign preceding the constants in the above equation. Taken together, these variables serve to explain 73.6 percent⁽⁵⁾ of the variations in title related

(5) The statistical measure computed as a normal part of regression analysis is the coefficient of determination which has this interpretation.

costs from state-to-state. Considering that this percentage can be from zero to 100, the 73.6 value represents a reasonably good selection from a statistical viewpoint of independent variables to predict or estimate a state's average title related costs. This assessment can only hold true within the range of values for the 50 observations for each of the independent variables.

HUD included some other factors in their analysis but rejected them from the final model because they did not meet a stated significance test for explaining state-to-state variations in title related costs. These factors were:

1. Wage levels.
2. Population growth.
3. Frequency of occurrence of title insurance charges.
4. Frequency of occurrence of closing fee charges.
5. Other dominant forms of establishing title.

Essentially, HUD used the national model to identify individual states for a subsequent analysis to develop equations to estimate maximum title related settlement costs. This analysis and the resultant estimating equations are described in the next section of this report.

Estimating Equations for Title Related Settlement Costs

HUD proceeded to develop a series of equations which could be used to calculate "reasonable charges for necessary services."⁽⁶⁾ In effect, this led HUD to include data only from those states that appeared to HUD to have reasonable costs and to exclude any factors which would only serve to explain the costs for what HUD considered unnecessary services.

We have attempted to trace the individual steps in this second analysis stage. We would point out, however, that no formal documentation exists for this analysis and any judgments applied during the course of HUD's efforts are identified solely on the basis of Mr. Chester Foster's recollections.

The initial step was to identify those states which HUD believed to have reasonable costs. Fourteen states were selected as follows:

1. The actual values for those variables contained in the national model were re-entered for each of the 50 states and the average title related cost (expressed as a percentage of sales price/mortgage amount) was computed using the model.

(6) Internal HUD memorandum Techniques Used to Estimate Tentative Maximum Charges for Settlement Services (no date, no signature).

2. The differences between the computed cost percent and actual cost percent was determined.
3. HUD reasoned that, since the national model represented the average situation for all states, any state whose actual cost percent exceeded its computed cost percent would have unreasonable charges and/or provide unnecessary services. Therefore, they selected fourteen of those states whose actual was less than computed.⁽⁷⁾ The determining factor in limiting the sample selection to fourteen states was not statistically based but rather related to the time and resource requirements to process a larger sample.

The table below lists the fourteen states which were selected for further data collection and analysis.

Table 1 - Tabulation of States Selected for
Further Data Collection and Analysis

State	Actual	Title Related Costs as a Percent of Sales Price	
		Calculated Per the National Model	Difference
Alabama	1.23	1.47	.24
Colorado	.69	.94	.25
Kentucky	1.14	1.48	.34
Minnesota	.67	.84	.17
Missouri	1.07	1.19	.12
Montana	.81	.98	.17
Nebraska	.38	.49	.11
Nevada	1.15	1.45	.30
New Hampshire	.63	.78	.15
Ohio	1.45	1.72	.27
Rhode Island	1.08	1.46	.38
Tennessee	1.40	1.65	.25
Wisconsin	.69	.95	.26
Wyoming	.60	.74	.14

(7) Ibid.

Page 77 of the HUD/VA January, 1972, Report on Mortgage Settlement Costs displays the state ranking of title related costs. The rankings are displayed below (note that a low ranking indicates a low cost):

Table 2 - Ranking of Title Related Costs for States Included in the Development of the Estimating Equations

<u>State</u>	<u>Ranking of Title Related Costs</u>
Alabama	25
Colorado	8
Kentucky	22
Minnesota	7
Missouri	16
Montana	15
Nebraska	2
Nevada	37
New Hampshire	6
Ohio	31
Rhode Island	20
Tennessee	27
Wisconsin	5
Wyoming	4

All of the selected fourteen states except Nevada, Ohio and Tennessee had rankings of twenty-five or less. Note that the ranking of Ohio may have been in the twenty-five or less range if the Cleveland area's data had been removed as was

Subsequently done during the development of the six estimating equations. Although HUD selected the states on the basis of actual percent cost being less than calculated cost, most of these states were also low cost states. Therefore, use of the six estimating equations will result in projections representative of relatively low cost states.

Although Hawaii, Massachusetts and Idaho (which were ranked 38, 28 and 11, respectively, in terms of title related costs⁽⁸⁾) had significant positive differences, HUD indicated that they were excluded for the following reasons:

1. Hawaii and Massachusetts were judged to be unrepresentative in terms of settlement activity and/or economic conditions.
2. Idaho data for subsequent analysis were not readily available.

HUD also excluded the Cleveland area from Ohio on the basis of the existence of escrow agent fees.

The selected states had 1,347 cases in the original sample which provided some of the basic data for developing these estimating equations. In this analysis, HUD defined total title related costs to include title examination, title insurance, closing fees, escrow fees and attorney fees.

(8) HUD/VA Report on Mortgage Settlement Costs, January, 1972, p. 77.

Excluded were the preparation of documents and other closing costs which had been used in the development of the national econometric model.

The same statistical technique, i.e., step-wise multiple regression, was used to develop the estimating equations with each case providing a sample observation. The independent variables included in the equations were the following:

1. Whether or not personal search with title insurance was used to establish title.
2. Whether or not abstract and title insurance was used to establish title.
3. The sales price if an owner or simultaneous policy was issued for the case or mortgage amount if a mortgage policy only was issued.
4. The rating of state title laws. This rating is on a scale of 0 to 1. This was subjectively determined by a HUD study of the degree to which statutes of limitations and title standards facilitated the title search effort.⁽⁹⁾
5. Whether or not the property was existing.
6. The average annual wage rate for the insurance, finance and real estate industries in the county that the case was from.
7. Whether or not a simultaneous owner and mortgagee title insurance policy was issued for the case.
8. Whether or not a title insurance company did the title search in its own plant for the case.

(9) See Exhibit 1 which is an internal HUD memorandum describing this rating process.

Several of the above factors required added data collection since the information was not a part of the original case input sheets. This included the identification of state title laws so they could be rated, wage information from the Department of Commerce county data, and the method of title search made by the insurance company involved.

HUD advised us that they attempted to introduce other factors into the analysis, but these were excluded because of failure to meet a standard statistical significance test. These factors were:

1. Population growth from 1900 to 1970.
2. Population growth from 1969 to 1970.
3. Population per square mile.
4. Percent of population that lived in urban areas.

The factors of population per square mile and percentage living in urban areas had been considered statistically significant in explaining cost variations in the national model but were not considered to be statistically significant in the six estimating equations. HUD indicated that this could reflect the low population density of the selected states.

The completed analyses resulted in six estimating equations to reflect various categories of title insurance policies as follows:

- I. Total title related costs for all cases.
- II. Title examination and title insurance cost for all cases.

- III. Total title related costs for owner and simultaneous issue of mortgagee policies cases.
- IV. Title examination and title insurance cost for owner and simultaneous issue of mortgagee policies cases.
- V. Total title related costs for mortgagee policies and no insurance cases.
- VI. Title examination and title insurance cost for mortgagee policies and no insurance cases.

Note that title examination and title insurance costs equal total title related costs less closing fees.

The general form of the estimating equations was:

$$Y = A + b_1X_1 + b_2X_2 + b_3X_3 + b_4X_4 + b_5X_5 + b_6X_6 + b_7X_7 + b_8X_8 ,$$

where the computed coefficients (b's) and the independent variables (X's) contained in each of the six estimating equations are indicated in Table 3. In equations I, III and V, Y equals total title related dollar costs. In equations II, IV and VI, Y equals title examination and title insurance dollar costs (closing fees have been excluded).

Mr. Foster indicated that subsequent to publication of the maximums in the Federal Register, a computer programming error was detected. The programming error resulted in the development of equations (III and IV) for all cases that had insurance, i.e., owner, mortgagee and Simultaneous Issue Policy cases. Initially, these were erroneously interpreted by HUD as being applicable to owner and Simultaneous Issue Policy cases. While the error may not have much effect on the final answers, it does reflect an instance of potential bias in the results. In the remainder of our report, these equations have been appropriately labeled as "All Insurance" cases.

Table 3 - Equation Coefficients

(Blanks indicate variable was not included)

Variables Policy and cost Classification	A Constant (\$)	X ₁ Personal Search and Title Insurance (1 = Yes 0 = No)	X ₂ Presence of Abstract and Title Insurance (1 = Yes 0 = No)	X ₃ Title Law Rating (0.0 to 1.0)	X ₄ Average Annual Wage Rate (\$)	X ₅ Simultaneous Issue (1 = Yes 0 = No)	X ₆ Title Search Done in Own Plant (1 = Yes 0 = No)	X ₇ Insurance Rate (Independent Variable is Sales Price or Mortgage Amount)	X ₈ Existing Property (1 = Yes 0 = No)
I. All Cases - Total Title Related Costs	72.6	58.0	-	-67.2	.00832	7.8	-17.9	.00238	14.6
II. All Cases - Title Examination and Title Insurance Costs	34.4	46.6	-	-45.5	.00876	13.4	-20.6	.00248	16.7
III. All Insurance Cases - Total Title Related Costs	77.9	74.6	14.7	-55.6	.00343	10.2	-	.00250	16.0
IV. All Insurance Cases - Title Exam- ination & Title Insurance Costs	57.7	66.1	25.5	-39.3	.00257	14.6	-	.00220	14.9
V. Mortgage Policy and No Insurance Cases - Total Title Related Costs	73.5	67.2	23.9	-76.0	.01023	-	-	.00138	6.2
VI. Mortgage Policy and No Insurance Cases - Title Examination and Title Insurance Costs	25.2	65.5	31.5	-48.8	.01106	-	-	.00133	9.6

The blank entries in the foregoing table indicate that the particular independent variable was excluded from the final estimating equation denoted in the left-hand column. For example, the "Simultaneous Issue" variable was not used in equations V and VI inasmuch as HUD believed that it was not applicable to these cases. The basis for the other exclusion, ("Abstract and Title Insurance" variable excluded from equations I and II) was, that in HUD's judgment, it failed to meet the statistical significance test for adding variables in the step-wise regression technique. However, the rationale of the other exclusions does not completely support the statistical result. For example, while the "Title Search Done in Own Plant" variable was included for "All Cases," it was excluded from the All Insurance Cases and the Mortgagee Policy and No Insurance Cases. Also, the "Abstract and Title Insurance" variable was excluded from the "All Cases" equations but was included in the remaining equations whose samples are sub-sets of the "All Cases." In other words, if a given variable (Title Search Done in Own Plant) is considered to be a relevant factor to estimating title related costs for the All Cases policy and cost classification, it would follow that it should be included for the other classifications which are sub-sets of the All Cases population. Similarly, if the "Presence of Abstract and Title Insurance" variable is significant

for the All Insurance (III and IV) population and Mortgagee and No Insurance (V and VI) population, it would follow that it should be included for the All Cases (I and II) population.

The measures related to the statistical accuracy or representativeness of the equations in estimating title related costs are depicted in the following table:

Table 4 - Summary of Statistical Accuracy of Estimating Equations

<u>Estimating Equations</u>	<u>Coefficient of Determination (% of Case-to-Case Variation Explained by Variables in Equation)</u>	<u>Standard Error of Estimate</u>	<u>Average Title Related Costs for Sample of Cases</u>
I. All Cases-- Total Title Related Costs	41%	\$50	\$141
II. All Cases-- Title Examination and Title Insurance Costs	45%	\$40	\$123
III. All Insurance Cases-- Total Title Related Costs	35%	\$50	\$152
IV. All Insurance Cases-- Title Examination and Title Insurance Costs	38%	\$39	\$133
V. Mortgagee Policy and No Insurance Cases-- Total Title Related Costs	48%	\$50	\$135
VI. Mortgagee Policy and No Insurance Cases-- Title Examination and Title Insurance Costs	46%	\$46	\$115

The values above suggest that the equations would generate a very imprecise estimate of title related costs for individual settlement cases within the fourteen states analyzed, let alone using the equations to estimate such costs in other states or counties.⁽¹⁰⁾ The coefficients of determination indicate that none of the equations has explained more than 48 percent of the variations in costs among the cases included in the samples, i.e., more than 52 percent is unexplained. Also, the application of the equations to any case in the fourteen states considered would yield a computed cost that can be expected, with a 95 percent assurance, to lie within about \$80 to \$100 (1.96 multiplied by the standard error of estimate) of the true total title related cost. This is a fairly broad range within which the true cost can possibly fall.

While the sample of 1,347 cases from fourteen states was clearly used to derive equations I and II for the "All Cases" situation, we had some difficulty in establishing the sub-samples used for the other equations. A review of the actual computer runs indicated the following breakout of the sample:

<u>Equations</u>	<u>Sample Used</u>
I and II	1,347
III and IV	1,108
V and VI	731

(10) Subsequently, similar equations were developed using county averages derived from the 1,347 sample cases. Although these equations had a coefficient of determination of .80 (or 80 percent), they were not introduced into any of the recommendations relative to maximum settlement charges.

Note that the sample sizes for equations III and IV (1108) and V and VI (731) do not add to the total sample size (1347) because the sample for V and VI includes 492 mortgagee policy cases which are part of the sample for equations III and IV.

The six equations described in this section served to generate the basic title related cost estimates used as a basis for the recommended maximum settlement charges recorded in the July 4, 1972, issue of the Federal Register. The procedure by which the specific values contained in the Federal Register were obtained is described in the following paragraphs.

Establishing Maximum Settlement Charges

Initially, HUD wrote a computer program which would accept appropriate input data from any area and process these data through the six estimating equations. One modification was made in translating the estimating equations to the logic contained in the computer program, namely, the cost effect of the "Existing Property" variable was added to the constant value for each equation. In effect, "Existing Property" was eliminated as a variable and assumed to exist in all cases.

A review of the computer program listing revealed an input error in the coefficient related to the "Title Law Rating" variable for equation V (Mortgagee Policy and No Insurance Cases-- Total Title Related Costs). The coefficient

determined during the analysis phase was -76.0298 while the input coefficient was -79.0298. Thus, equation V could underestimate total costs by up to \$3.00. While the error is relatively insignificant, it does reflect another instance of potential bias in the results.

In order to provide an understanding of the sequence of steps involved in arriving at the maximum settlement charges shown in the July 4, 1972, issue of the Federal Register, we have carried through the computations for the Washington Standard Metropolitan Statistical Area (SMSA), District of Columbia and Maryland-Virginia parts. The input for the remaining seven variables ("Existing Property" variable assumed in all cases) was the following:

Table 5 - Input for Variables

Variable	Value Input For	
	D. C. Part	Md.-Va. Part
Personal Search and Title Insurance	0	1
Abstract and Title Insurance	0	0
Title Law Rating	.2	.2
Average Annual Wage	\$7,150	\$7,000
Simultaneous Issue	1	1
Own Title Plant Does Search	1	0
Average Sales Price	\$21,500	\$29,100

The estimated cost computed from equation I (All Cases-- Total Title Related Costs) for the Maryland-Virginia part of the Washington SMSA was determined as follows:

<u>Input</u>	<u>Equation Coefficient</u>	<u>Computed Cost Effect</u>
1	58.0	\$ 58.00
0	0	0
.2	-67.2	-13.44
7000	.00832	58.24
1	7.8	7.80
0	-17.9	0
29100	.00238	69.26

		179.86
	+ Constant	72.60
	+ Effect of Existing Property	14.60

	Estimated Cost	\$267.06
		=====

Similar results for the remaining equations are listed below:

Table 6 - Summary of Estimated Costs

<div>Cost</div> <div>Policy Class</div>	Total Title Related		Title Examination and Title Insurance	
	D. C. Part	Md.-Va. Part	D. C. Part	Md.-Va. Part
All Cases	\$174	\$267	\$151	\$235
All Insurance Cases	\$171	\$264	\$145	\$228
Mortgagee Policy and No Insurance Cases	\$167	\$243	\$133	\$207

Since HUD's objective was to determine an estimate of title examination cost, it was necessary to reduce the above cost estimates by an estimate of title insurance and closing fees. HUD informed us that the estimated title insurance cost was determined as follows:

Table 7 - Title Insurance Estimates

<u>Item</u>	<u>D. C. Part</u>		<u>Md.-Va. Part</u>	
	<u>All Cases and All Insured Cases</u>	<u>Mortgagee Policy and No Insurance Cases</u>	<u>All Cases and All Insured Cases</u>	<u>Mortgagee Policy and No Insurance Cases</u>
Sales Price	\$21,500	\$21,500	\$29,100	\$29,100
X Assumed Insurance Rate in \$/\$1,000	.003	.002	.003	.002
=	\$65	\$43	\$87	\$58
+ Simultaneous Issue Premium	10	0	10	0
= Title Insurance	\$75	\$43	\$97	\$58
	==	==	==	==

The following two tables summarize the resulting estimated title examination cost after subtracting the appropriate estimated title insurance cost and a closing fee of \$50 (also subjectively determined by HUD), where applicable:

Table 8 - Estimates of Title Examination Costs

Washington SMSA - D. C. Part

Case and Cost Classification	Estimated Total Cost	Title Insurance	Closing Fee	= Estimate of Title Examination Cost
I. All Cases-- Total Title Related Costs	\$174	\$75	\$50	\$49
II. All Cases-- Title Examina- tion and Title Insurance Costs	\$151	\$75	\$ 0	\$76
III. All Insurance Cases-- Total Title Related Costs	\$171	\$75	\$50	\$46
IV. All Insurance Cases-- Title Examination and Title Insurance Costs	\$145	\$75	\$ 0	\$70
V. Mortgagee Policy and No Insurance Cases-- Total Title Related Costs	\$167	\$43	\$50	\$74
VI. Mortgagee Policy and No Insurance Cases-- Title Examination and Title Insurance Costs	\$133	\$43	\$ 0	\$90

Table 9 - Estimates of Title Examination Costs

Washington SMSA - Md.-Va. Part

Case and Cost Classification	Estimated Total Cost	Title Insurance	Closing Fee	= Estimate of Title Examination Cost
I. All Cases-- Total Title Related Costs	\$267	\$97	\$50	\$120
II. All Cases-- Title Examina- tion and Title Insurance Costs	\$235	\$97	\$ 0	\$138
III. All Insurance Cases-- Total Title Related Costs	\$264	\$97	\$50	\$117
IV. All Insurance Cases-- Title Examination and Title Insurance Costs	\$228	\$97	\$ 0	\$131
V. Mortgagee Policy and No Insurance Cases-- Total Title Related Costs	\$243	\$58	\$50	\$135
VI. Mortgagee Policy and No Insurance Cases-- Title Examination and Title Insurance Costs	\$207	\$58	\$ 0	\$149

The recommended maximum title examination charges appearing in the July 4, 1972, Federal Register for the Washington SMSA - D. C. part and Maryland-Virginia part, respectively, is \$90 and \$130. There is no direct relationship between these values and the computed values shown in the above tables. HUD informed us that a single value indirectly related to these computations was forwarded to various HUD and VA field offices for review, and the numbers appearing in the Federal Register reflect a general consensus of the people in these locations.

A number of procedural aspects of this last phase reflect some inconsistencies and observations which we have noted below:

1. The insurance rate coefficients for each of the Policy and Cost Classification equations are displayed in Table 3. These indicate, for example, that the insurance rate effect included in the model for Policy and Cost Classification I, All Cases-- Total Title Related Costs, is \$2.38 per thousand; \$2.43 for Policy and Cost Classification II; \$2.50 for Policy and Cost Classification III, and so forth. In the procedure employed to develop title insurance and closing fees, as shown in Table 7, assumed insurance rates of \$3.00 per thousand were used for each of the Policy and Cost Classifications mentioned above. The percentage effect of this procedural inconsistency for each Policy and Cost Classification is shown in the table that follows:

Table 10 - Comparison of Estimating Equation Insurance
Rate Effects and Insurance Rate Effects
Used to Estimate Title Insurance Costs

Policy and Cost Classification	Insurance Rate Effect/\$1,000		
	Equation Coefficient for Insurance Rate (See Table 3) (A)	Assumed for Title Insurance Cost Estimate (B)	% Differences $\frac{(A-B)}{(A)}$
I. All Cases-- Total Title Related Costs	\$2.38	\$3.00	26%
II. All Cases-- Title Examina- tion and Title Insurance Costs	\$2.48	\$3.00	21%
III. All Insurance Cases-- Total Title Related Costs	\$2.50	\$3.00	20%
IV. All Insurance Cases-- Title Examination and Title Insurance Costs	\$2.20	\$3.00	36%
V. Mortgagee Policy and No Insur- ance Cases-- Total Title Related Costs	\$1.38	\$2.00	45%
VI. Mortgagee Policy and No Insurance Cases-- Title Examination and Title Insurance Costs	\$1.33	\$2.00	50%

Similar procedural inconsistencies related to the simultaneous issue premium effect included in the estimating equations (Table 3) as compared to the \$10 premium assumed in the estimation of title insurance cost (Table 7).

The effect of the differences between the estimating equation values and assumed values used for insurance rates and simultaneous issue premiums is summarized on the following page. Examples of the effect are shown for Maryland-Virginia (for a \$29,100 price) and for Washington, D. C. (for a \$21,500 price). It can be seen that for each cost and policy classification, use of the estimating equation coefficients would have resulted in lower estimates of title insurance cost which in turn would have increased the estimates of title examination costs displayed in Tables 8 and 9.

Table 11 - Comparison of Total Insurance Cost -
Estimating Equations Versus Assumed Costs

Washington SMSA - D. C. Part Insurance Costs (For \$21,500 Price)

Cost and Policy Class	Estimating Equation Calculated Effect			HUD Assumptions	% Difference
	Simultaneous Issue	Insurance Rate X Price	Total Insurance Cost		
I. All Cases-- Total Title Related Costs	\$ 7.80	\$51.20	\$59.00	\$75.00	27%
II. All Cases-- Title Examination and Title Insurance Costs	\$13.40	\$53.30	\$66.70	\$75.00	12%
III. All Insurance Cases-- Total Title Related Costs	\$10.20	\$53.80	\$64.00	\$75.00	17%
IV. All Insurance Cases-- Title Examination and Title Insurance Costs	\$14.60	\$47.30	\$61.90	\$75.00	21%
V. Mortgagee Policy and No Insurance Cases-- Total Title Related Costs	\$ 0	\$29.70	\$29.70	\$43.00	45%
VI. Mortgagee Policy and No Insurance Cases-- Title Examination and Title Insurance Costs	\$ 0	\$28.60	\$28.60	\$ 43.00	50%

Table 12 - Comparison of Total Insurance Cost -
Estimating Equations Versus Assumed Costs

Washington SMSA - Maryland-Virginia Part Insurance Costs (For \$29,100 Price)

Cost and Policy Class	Estimating Equation Calculated Effect			HUD Assumptions	% Difference
	Simultaneous Issue	Insurance Rate X Price	Total Insurance Cost		
I. All Cases-- Total Title Related Costs	\$ 7.80	\$69.30	\$77.10	\$97.00	26%
II. All Cases-- Title Examination and Title Insurance Costs	\$13.40	\$72.20	\$85.60	\$97.00	13%
III. All Insurance Cases-- Total Title Related Costs	\$10.20	\$72.80	\$83.00	\$97.00	17%
IV. All Insurance Cases-- Title Examination and Title Insurance Costs	\$14.60	\$64.00	\$78.60	\$97.00	23%
V. Mortgagee Policy and No Insurance Cases-- Total Title Related Costs	\$ 0	\$40.20	\$40.20	\$58.00	44%
VI. Mortgagee Policy and No Insurance Cases-- Title Examination and Title Insurance Costs	\$ 0	\$38.70	\$38.70	\$58.00	50%

2. Estimates of title examination costs for each case and cost classification are shown for Washington SMSA - Washington, D. C. part, and Washington SMSA - Maryland-Virginia part, in tables 8 and 9, respectively. The case and cost classifications are organized and defined so that by taking the difference in estimated total costs for case and cost classification groups I and II, an estimate of closing fees can be obtained, e.g., the difference between All Cases-- Total Title Related Insurance Costs and All Cases-- Title Examination and Title Insurance should estimate closing fees. As opposed to using the model estimates for closing fees, the HUD procedure as illustrated in Tables 8 and 9 includes an assumed value of \$50. The effect of this procedural inconsistency is summarized in Tables 13 and 14 following.

Table 13 - Comparison of Closing Fees as Obtained
from Estimating Equations Versus Assumed Closing Fees

Washington SMSA - D. C. Part

Case and Cost Classification	Estimated Total Cost	Estimated Closing Fees	Assumed Closing Fees	Difference
I. All Cases-- Total Title Related Costs	\$174	\$23	\$50	\$27
II. All Cases-- Title Examination and Title Insurance Costs	\$151	\$ -	\$ -	\$ -
III. All Insurance Cases-- Total Title Related Costs	\$171	\$26	\$50	\$24
IV. All Insurance Cases-- Title Examination and Title Insurance Costs	\$145	\$ -	\$ -	\$ -
V. Mortgagee Policy and No Insurance Cases-- Total Title Related Costs	\$167	\$34	\$50	\$16
VI. Mortgagee Policy and No Insurance Cases-- Title Examination and Title Insurance Costs	\$133	\$ -	\$ -	\$ -

Table 14 - Comparison of Closing Fees as Obtained
from Estimating Equations Versus Assumed Closing Fees

Washington SMSA - Maryland-Virginia Part

Case and Cost Classification	Estimated Total Cost	Estimated Closing Fees	Assumed Closing Fees	Difference
I. All Cases-- Total Title Related Costs	\$267	\$32	\$50	\$18
II. All Cases-- Title Examination and Title Insurance Costs	\$235	\$ -	\$ -	\$ -
III. All Insurance Cases-- Total Title Related Costs	\$264	\$36	\$50	\$14
IV. All Insurance Cases-- Title Examination and Title Insurance Costs	\$228	\$ -	\$ -	\$ -
V. Mortgagee Policy and No Insurance Cases-- Total Title Related Costs	\$243	\$36	\$50	\$14
VI. Mortgagee Policy and No Insurance Cases-- Title Examination and Title Insurance Costs	\$207	\$ -	\$ -	\$ -

Summary

The preceding sections of this report focused specifically on the procedures, techniques, and assumptions used in each of the five basic steps that describe the process by which HUD reached their recommendations regarding maximum mortgage settlement charges. In the course of this documentation, we made reference to certain inconsistencies, inaccuracies and subjective judgments which have an impact on the HUD recommendations. These references raise questions and concerns related to the validity of the recommendations posed by HUD. These questions or concerns are summarized as follows:

1. The sampling procedures employed did not result in the selection of a random sample. Disproportionate emphasis was given to certain types of cases which in turn may have introduced a bias in the resultant models developed.
2. The cases of fourteen states were included as the basis for development of the estimating equations for the six policy and cost classifications previously described. These states, by virtue of the fact that actual cost percent was less than computed cost percent, were designated by HUD as states having reasonable costs and states which do not provide unnecessary services. Other states also having actual cost percent less than computed cost percent were excluded from the study on the basis of time and resource availability. The impact of these exclusions has not been evaluated.

3. The criteria used by HUD for sample selection in the development of the six estimating equations resulted in the inclusion of cases from states which are predominantly low cost. The estimating equations are therefore representative of only those states and correspondingly can be expected to project costs typically experienced only in those states.
4. The six estimating equations developed by HUD compute estimates which are statistically interpreted as "average" title related costs. The average title related cost estimates have been used to establish maximums without the statistical recognition of the inherent variability in any point or average estimate. The methodology employed by HUD to establish the maximum allowable costs indicates that model results were treated as maximums rather than average estimates.
5. Procedural inconsistencies were identified during the course of our review regarding the application of assumed closing fee and insurance rates as opposed to utilizing the rates as contained in the models that were developed. The effect of this inconsistency resulted in reduced estimates of title examination costs.
6. Although HUD believed that the national econometric model represented a "reasonable reflection of the important underlying causes of variation in title related costs"(11) most of these variables were discarded during development of the six estimating equations. The impact of a national econometric model, constructed to include variables consistent with the six estimating equations, was not evaluated. Additionally, exclusion of a

(11) HUD/VA, Op. Cit., pp. 104-105.

pertinent variable from the "All Cases" equations is inconsistent with the inclusion of the same variable in the other equations. The impact of this inconsistency was not evaluated.

7. The presence of two detected computational errors in the work performed during development of the six estimating equations introduced a degree of bias in the study results. Additional errors and their impact on the published results are of concern especially in light of the lack of formal study documentation.
8. The final six estimating equations are imprecise with a large percentage of the variability in the dependent variable remaining unexplained. It can therefore be hypothesized that the total variation in the dependent variable is related to factors not considered in the HUD study.

Until the full impact of the above points can be evaluated, we feel that the representativeness of maximum allowable costs and utility of the estimating equations as a device for setting nation-wide maximums are questionable.

RATING OF STATE TITLE LAWS

"Marketable Title Acts - the 14 states with a marketable title act were given the highest rating. In most cases this was a one, although five of the states were rated somewhat lower due to the number of exceptions and/or the limited effectiveness of their acts. In no case was a marketable title state rated lower than one without such an act."

"Title Standards - each non-marketable title act state was given a .2 for adoption of a title standard. This was added to the rating of statutes of limitation to determine the final rating."

"Statutes of Limitation - this rating was made after reviewing state laws with respect to eight statutes. These were divided into three classes on the basis of their importance in facilitating the title search. The most important of these were the statutes barring ancient mortgages, judgement liens, and mechanic's liens. The second class consisted of those statutes barring execution and attachment liens and notice of lis pendens. The third dealt with interests of the state, attacks on judicial or official sales and attacks on sales by fiduciaries."

"Each state was given points for each of the above statutes adopted, the number of points depending on the class

of the statute. In addition, the points for each statute in each state were adjusted for the effectiveness of the statute and the term of years which the statute contained."

"A perfect score on these statutes would give the state a rating of .6, which when added to the .2 received if a title standard was adopted, gave an overall rating of .8. This remains below the rating of 1 given to a marketable title state."

"There were several statutes of limitation which were not considered in the above rating. These were judged to have minimal impact on the actual title search. They include the statutes dealing with dower, community property, land contracts, options, stray deeds, indefinite references, equitable charges, miscellaneous tax liens, covenants, and administration of estates. In addition, the difficulties of interpreting the laws dealing with future interests and adverse possession precluded them from being numerically rated. The various curative acts were also left out of the rating since they do not directly effect the ease or difficulty of title search. They are aimed instead at curing defects once they have been discovered."

- - - - -

Note: HUD initially analyzed twenty-two different types of statutes. These were boiled down to the eight types mentioned in the memorandum above.

The CHAIRMAN. Well, suppose we move to the next member of the panel. Mr. Rush?

Mr. RUSH. Yes.

Mr. Chairman, members of the subcommittee, my name is Fletcher G. Rush. I am from Orlando, Fla. I speak here on behalf of the Florida Bar which is a State bar association having in excess of 14,500 members and of which I am a former president. And also, I speak for lawyers' title guaranty fund which is a title assuring organization composed of more than 4,000 Florida lawyer members, as a former chairman of its board of trustees and presently as its general counsel.

Mr. Chairman, I have submitted a written statement for the record, and I know that that has been made available and will be part of the record. I simply want to take a couple of minutes and summarize what I think are some of the main things I have tried to say.

There are two main areas I want to comment on. No. 1, propriety of Federal ratemaking or regulation in this area of closing and settlement costs. And the other is some comments on S. 2228.

As to Federal ratemaking, it is our position it is not proper or desirable from a public policy standpoint in this area we are talking about; that it is a very extreme remedy and ought to be an absolute last resort to eliminate any excessive or unreasonable charges for settlement services; that it is contrary to this country's traditional philosophy regarding the role of the marketplace in competition. These settlement services are essentially local services.

There are many differences in them because of legitimate differences arising from a diversity in local laws and economic conditions and operating conditions. Federal rate regulation of settlement costs would not get at the basic underlying causes and problems and that before we resort to the extreme remedy of Federal rate regulation, we ought to try the remedy of attacking the underlying causes.

Now, we are frank to admit to you there are some problems and abuses in connection with settlement services. And we believe that the Federal Government may have a proper and important role in at least three areas of reform where legislation would be helpful. I will mention these briefly.

The first is the elimination of abuses and undesirable practices such as, for example, the payment of kickbacks and unearned fees which increase the total settlement costs, but do not provide any benefits to the home buyer.

Secondly, to assist and encourage the State governments to simplify and modernize systems used for land transfers. This would result in increased productivity and efficiency of lawyers and the title industry with a correspondent decrease in cost and increase in service to the client and to the customer, the home buyer.

And thirdly, to provide the home buyers a more timely and greater disclosure concerning the nature and the costs of real estate settlement services so that buyers can shop around more knowledgeably for these services with resulting increase in competition.

Now, just briefly about S. 2228. We believe that this bill is a good bill. We support it. We think it would help achieve these objectives that I have spoken of. And the Florida Bar Association and lawyers' title guaranty fund and myself support this bill and urge the subcommittee do likewise.

I leave with you a final thought. And that is that I would urge you not to resort to the extreme last-resort remedy of ratemaking and regulation until you have tried to correct the abuses and problems by legislation which attacks their underlying causes.

Thank you.

[The full statement of Mr. Rush follows:]

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STATEMENT OF FLETCHER G. RUSH
ON
PROPOSED LEGISLATION DEALING
WITH REAL ESTATE SETTLEMENT COSTS
INCLUDING S. 2228
SUBMITTED JULY 30, 1973
TO
SUBCOMMITTEE ON HOUSING AND URBAN
AFFAIRS OF THE COMMITTEE ON
BANKING, HOUSING AND URBAN AFFAIRS
UNITED STATES SENATE

STATEMENT

I make this statement on behalf of The Florida Bar which is a state bar association having in excess of 14,500 members, as a former President of that association, on behalf of Lawyers' Title Guaranty Fund, which is a bar-related title assuring organization in the State of Florida which has more than 4,000 Florida lawyer members, as a former Chairman of its Board of Trustees and presently its General Counsel, and as an active practicing Florida lawyer.

First, I want to state that we believe that Federal rate-making is not proper or desirable, from a public policy standpoint, as a response by the Federal government to the need to ensure that title to real property can be readily transferred at reasonable costs. Here are some of the reasons why we believe that the regulation by the Federal Government of real estate settlement charges is a totally inappropriate and unwise response to the problems that do exist in this area.

Federal rate regulation is a very extreme remedy and ought to be an absolute last resort in an attempt to eliminate excessive charges for settlement services. It is contrary to this country's traditional philosophy regarding the role of the marketplace. Competitive pricing rather than the fixing of prices is most likely to produce greater efficiency at reasonable prices. We believe that competitive and regulatory safeguards presently exist or can be developed so as to ensure that reasonable charges are made

for settlement services without the necessity for Federal rate regulation.

The Federal rate regulation of charges for settlement services would be an enormous costly Federal bureaucracy if it is to be fair and consonant with due process. It would not be a wise utilization of the Federal government's resources and energies to create such a bureaucracy, comparable to other Federal agencies that have the authority to regulate rates, for the purpose of regulating rates for what are essentially local services. The creation of such a bureaucracy would, in the field of title insurance, duplicate existing state regulatory programs. Such duplication of regulation would impose additional administrative burdens on title insurers that would increase title insurance costs and ultimately the charges that must be made to the purchasers of homes, which would not be in the public interest.

Federal rate regulation would deal only with the symptoms and not with the basic underlying causes of excessive settlement charges. Rate regulation has been described by the Federal Home Loan Bank Board as a merely symptomatic treatment like the administration of a pain-killer as a remedy for appendicitis. It would not deal with the fundamental reasons why settlement charges may be excessive. If these charges are too high in some localities because of specific problems or abuses, then these problems and abuses should be directly dealt with, such as the payment of "kickbacks" which should be prohibited. To ignore these underlying causes is not good government and it is not consistent with the traditional role of government which is to solve such problems. Sound policy requires that such problems and abuses should be attacked by government, not ignored by resorting to price-fixing as a solution.

Federal involvement should be limited to problems that are clearly national in scope, and the Federal government should not attempt to solve every problem that arises in this country. There has been no showing that settlement charges in general, and land title charges in particular, are excessive throughout the United States. They do not present a problem that is national in scope. HUD's Report to the Congress in February, 1972, confirmed this. It would be illogical to place an entire sector of the economy under Federal rate regulation when excessive charges in that sector are not a widespread problem. Even though certain problems and abuses may exist in a few specific areas of the United States, which result in excessive charges for settlement services, this is not a sufficient basis for a nationwide Federal program that would impose rate regulation on many thousands of businesses and individuals who provide settlement services. Such rate regulation would ignore fundamental differences in the legal, economic and operational conditions under which settlements are conducted.

Too much involvement or control at the Federal level may prove to be less efficient and productive in certain areas. One of these areas is the process by which title to real estate is transferred. The settlement process for real estate transfers involves local lawyers and businessmen who operate under economic conditions and laws that vary from state to state and many times from county to county. The differences in the nature and costs of settlement services around the United States are accounted for by this variety of local laws and practices which generate the different responses of the many localities and states to the problems and difficulties of transferring

and establishing title to real property.

Federal rate regulation of charges for certain land title related services, such as attorneys fees and title insurance charges, would not reduce settlement costs significantly to the purchaser of a home. The reason for this is that the major portion of the total settlement charges on a home purchase consists of items such as loan origination fees, loan discounts or points, real estate sales commissions, prepaid taxes and insurance, transfer taxes, and recording fees. The regulated charges would account for only a small portion of the total settlement charges. It doesn't make sense for the Federal government to fix the rates for services that traditionally have been the concern of the states or their political subdivisions, in view of the bureaucratic problems and resulting costs that rate-making would involve, if the final result is that only a small portion of the total settlement charges will be affected. With so little potential benefit the cost of such a rate-making structure could not be justified.

We now turn to S.2228 which is entitled "A Bill to provide for greater disclosure of the nature and costs of real estate settlement services, to eliminate the payment of kickbacks and unearned fees in connection with settlement services provided in federally related mortgage transactions and for other purposes".

While we have taken the position that rate regulation by the Federal government would be unsound public policy and ill conceived, we do believe that the Federal government may have a proper and important role in the area of settlement services where we recognize there are certain abuses and

problems which require reforms. Federal involvement could be appropriately directed toward those reforms that probably will not be achieved by private industry or by state and local governments. We believe that there are three areas of reform that would be appropriate and they are first the elimination of abuses and undesirable practices such as the payment of kickbacks and unearned fees which increase the total settlement costs but do not provide to the home purchaser any benefits, second the assisting and encouraging state governments to simplify and modernize the systems used for land transfers so as to increase the productivity and efficiency of lawyers and the title industry with a corresponding decrease in cost and increase in service to the client and customer, and third the providing to purchasers of homes a more timely and greater disclosure concerning the nature and costs of real estate settlement services so that such purchasers can shop around more knowledgeably for these services with the resulting increase in competition. We are convinced that Federal assistance, through appropriate legislation, toward achieving these objectives will bring to home purchasers throughout our country much greater and more permanent benefits than any system of Federal rate regulation can provide. S.2228 is such appropriate legislation to help achieve these objectives and The Florida Bar and Lawyers' Title Guaranty Fund support this Bill and urge the Subcommittee to support it.

The CHAIRMAN. Thank you very much, Mr. Rush.

Our next witness is Mr. Crenshaw.

Mr. CRENSHAW. Thank you, Mr. Chairman.

My name is Robert Crenshaw, and I am here on behalf of the State Bar of Georgia as the designee of the president and of the executive committee of the State bar to make this presentation.

My law partner, Mr. Stanley H. McCalla, who is one of the best known real estate lawyers in Georgia, is also with me.

The State Bar of Georgia is filing a statement with the subcommittee which statement sets out in detail the reasons for our opposition to any proposed regulation of real estate settlement charges and attorneys' fees. We request that this statement be made part of the record of these hearings, and we hope very much that the members of the subcommittee and its staff will carefully review this statement before taking any action in respect to the subject matter.

At this time and because the agenda of the committee is so limited, I will confine my remarks to the briefest summary of our position. And I will be happy to answer any questions which members of the subcommittee may have.

The State Bar of Georgia opposes any such Federal regulation of real estate settlement charges and legal fees on three primary grounds; namely:

One, same would necessitate the establishment of a large and expensive agency to establish fair charges throughout 50 different States and over many subareas within the respective States.

Two, same would not have the effect of reducing costs to the consumer—namely, the home buyer—but would result in the aggregate of increasing these costs, thereby thwarting the fundamental purpose of such regulation, and

Three, same would be inherently unfair to the legal and the other professions so regulated by substituting, in effect, a type of "socialism" or "state control" for what has historically been the most private of private enterprise.

These are in briefest summary our grounds of opposition. We hope very much that the committee will review carefully the detailed statement which we have filed. And we will be happy to furnish any additional information or answer any questions which the committee may wish to ask.

The CHAIRMAN. Thank you very much, Mr. Crenshaw.

[The complete statement of Mr. Crenshaw follows:]

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STATEMENT OF THE STATE BAR OF GEORGIA -
TO THE SENATE SUBCOMMITTEE ON HOUSING
AND URBAN AFFAIRS -- RE FEDERAL
REGULATION OF CLOSING AND SETTLEMENT CHARGES

This Statement of the State Bar of Georgia is prepared and filed with the Subcommittee on Housing and Urban Affairs of the Senate Banking, Housing and Urban Affairs Committee pursuant to notice of hearings by the Chairman published in the Congressional Record of June 29, 1973. We (the State Bar of Georgia) present this Statement by authority of unanimous vote of the Board of Governors of the State Bar of Georgia, said vote having been confirmed as of July 11, 1973, by the unanimous vote of the Executive Committee of the State Bar of Georgia.

We present this Statement in respect to any proposed section or provision of a Housing Bill which would permit the regulation (by fixing fee amounts or otherwise) by a Federal Agency of real estate closing and settlement procedures. A Bill was introduced in the 92nd Congress last year to empower the Secretary of Housing and Urban Development to promulgate maximum charges which could be assessed for services in respect to settlement and closing costs in residential transactions, such charges to include, among others, title insurance premiums and attorney's fees. Also, this proposed legislation sought to regulate real estate transactions in a number of other ways -- some good and some bad as we will point out further in this Statement.

Before speaking specifically to any such suggestions which have been made in respect to Federal regulation of real estate transactions, we think it helpful to recount briefly certain background aspects.

To begin with, the various different states of the union have different systems of indexing land titles and different procedures of land conveyancing. The states in the eastern part of the country, particularly those comprising the original thirteen colonies, predominantly describe real estate parcels by "metes and bounds" -- which is to say that the distance and direction of each side and amount of angle of the property (usually an irregularly shaped, many-sided parcel --- sometimes meandering with creeks or streams) is described in detail. In contrast with this, many of the western states have "tract indexes", and more or less standardized sizes and shapes of lots in a typical subdivision, thus providing uniformity of description and relative simplicity of abstracting. In older states, the titles may have passed through many generations from one hundred to two hundred years, and various portions of various tracts may have been sold to different parties throughout all of this time, thereby creating difficult deviations in the chain of title and even creating new and smaller chains of title for the examiner in respect to the parcels sold off. In the newer states in the West, the combination of standardized parcels along with relatively little "breaking up" of these parcels by such

partial or fragmentary sales may render the title examiner's or abstractor's job much easier. In any state, however, the title examiner's time and work represents a valuable contribution to the real estate sale process and to increased home ownership of the citizen.

For further background, and in addition to the tract indexing problem just described, it is noted that the actual closing and conveyancing process is different in many of the states and intra-state localities. For instance, many states have a number of professional persons or other entities who are each specialists in one aspect of the entire real estate conveyancing process, and who submit their separate fees for their respective services which are paid at the closing. In these states, the customary services performed and paid for separately (a "fragmentizing" system) may include the furnishing of a title abstract, the preparation of documents, the settlement or closing, the furnishing of escrow services, an attorney's opinion, a title insurance policy, and others. As stated above, separate fees are paid to each of the persons furnishing such services. Of course a number of other costs are also paid at the closing for other services but such services do not relate in any way to legal work, and accordingly are omitted in this discussion.

We will speak briefly about the practice in Georgia. Like many of the older states, Georgia real estate is indexed and described primarily by militia

districts, land lots, and difficult metes and bounds. In respect to the actual conveyancing process, Georgia contrasts with the "fragmentizing system" just described, with its separate fees and separate specialists for the separate services. In Georgia, most real estate transactions are handled and processed by the attorney from beginning to end with the exception of some transactions handled by one title insurance company whose activities in this area are conducted predominantly in Atlanta. The attorney quite often prepares the sales contract between the buyer and the seller. If not, he almost always has occasion to review the sales contract. He then investigates the status of the title to the property at the local county courthouse. Upon occasion, the property will be located in more than one county and of course he will review and investigate the status of title in such other county. He then prepares from his notes a preliminary title report and forwards same to his client, whether the client be the individual purchaser or be a lender who has made a loan commitment to the prospective purchaser. He is then called upon quite often to assist in obtaining clearances of any title encumbrances specified in this preliminary title report. He next prepares all necessary documents incident to the transaction including in almost all cases a warranty deed, a lender's promissory note, a lender's mortgage or security deed, a closing statement or settlement sheet between buyer and seller and between borrower and lender, a truth-in-lending statement; a seller's affidavit, a buyer's affidavit, and other multiple forms required by FHA, VA, FNMA, and FHLMC; and in many transactions he pre-

pares ancillary documents such as other affidavits, quitclaim deeds, assignments, additional agreements for collateral, and ancillary agreements between the parties. After this is done, he conducts the actual closing or settlement, and at that time he distributes proper payments to all parties including sending checks to previous lenders or encumbrancers of amounts necessary to clear the title, checks to the proper county recording officials for prompt recording of the deeds, checks to the local tax collectors to pay city and county taxes, additional intangible tax payments to the tax collectors and finally the net purchase money check to the seller. After the closing, he files the deeds for record at the appropriate courthouse, waits several days until they are recorded, re-examines the courthouse records to insure that no intervening lien or deed has been filed, secures all deeds back from record and sends the purchaser's warranty deed to him. He finally closes his file on the transaction by the issuance of his final certificate of title to his client certifying that all encumbrances have been paid and that the buyer has good fee simple title or that (if his client is the lender) the lender has a paramount first mortgage lien upon the property.

For all of the above services, the Georgia lawyer submits his bill for one fee, which is paid at the closing. This has been the custom in our State for many decades, and there has never been any complaint by any group in respect to either the procedural system of handling the transaction or the amount of the attorney's

fee. Even in Atlanta which is a high cost of living area, the average fee on a residential transaction of \$25,000 is less than 1% thereof, or less than \$250. There are no further or additional fees relating to the title unless the transaction requires a title insurance policy (and most transactions do not) in which case there is an additional cost of \$50 representing the premium to the title company for issuing the policy in this amount. When one considers the total number of man-hours involved in performing all of this work, this fee seems remarkably small.

In addition to the services performed in the foregoing description, the lawyer is often called upon to perform additional or ancillary services. For instance in the average situation of the sale of a residence, there quite often exist encumbrances on the title which must be cleared by legal assistance. The purchaser, who is a layman, certainly is not aware of the procedures necessary in order to clear up such title encumbrances. However, some of them may be relatively simple to the attorney; and he quite often in our State handles routine clearances without imposing an additional charge. An example of this may be the preparation of a simple affidavit of heirship in respect to the estate of a decedent who was in the chain of title, or perhaps an affidavit of adverse possession. Other routine clearances may involve preparing and having executed quitclaim deeds, cancellations, written releases, and the like. If the attorney is called upon to clear more serious title objections such as securing the appointment of a guardian for a minor or incompetent

from whom a deed must be secured, and securing a court order to this effect, then a separate charge is customarily made; but such charge is usually less than the legal fee for such services were the client to secure another attorney to handle such difficulties and title clearances. What we are saying to the Committee is that the consumer in the average real estate transaction wherein the attorney furnishes these various services is receiving a great deal of professional assistance for a very modest fee.

The foregoing situation and procedure in Georgia has been approved by lenders, home builders, title insurance companies, and the public for many years for its relative simplicity and economy. We believe the system to be sound and to be eminently fair to the consumer. We believe that the tremendous housing growth in Georgia and throughout the Southeast in recent years confirms this economy and fairness. The attorney's fee has always remained at a level which has been recognized locally by FHA and VA as being reasonable; and these factors have benefited the public at large.

Our State Bar strongly recommends that lawyers continue to handle these real estate transactions from beginning to end. Incipient legal questions exist in the great majority of real estate titles. For instance, the rights of creditors in respect to previous liens are commonly involved; property passing through the estate of a bankrupt may cause problems; property granted

to or claimed by a spouse in a divorce litigation is troublesome; construction of wills, ascertainment of heirs, and the administration of estates is an ever recurring situation; and there are many other legal problems which only a lawyer is equipped to analyze and properly handle. All of the foregoing is in addition to the necessary analyses of previous conveyances in the chain of title, with possible problems relating to defective conveyances or the quantum of interest conveyed. In respect to the deed of conveyance itself, the lawyer's task is not simple since, as one of the 13 original states, all property in Georgia is described by militia districts, by land lots and by metes and bounds -- which system has created a large number of inaccuracies over the years and accordingly necessitates close inspection by an experienced attorney of the exact description in the deed.

Should Federal Law impose rigid restrictions upon the fees charged by the attorney in respect to the strict real estate portion of the transaction, we believe the inevitable result will be to compartmentalize the attorney's practice so that he restricts himself solely to the area for which he is allowed a fee. Additional services which are now performed either gratuitously or at a very low fee will be performed not at all or for an amount commensurate with the larger fee that an independent lawyer would charge a similar client for similar services. Accordingly the cost to the consumer will ultimately be increased.

The crux of our position is that when one considers the actual amounts of fees paid generally to attorneys in Georgia real estate transactions, one cannot find any "abuse" (so far as amount is concerned) which Congress should undertake to correct. The State Bar of Georgia would welcome the curing of abuses if any are found to exist in the system of real estate conveyancing now prevalent in our State, but the State Bar respectfully but most emphatically avers that no such abuse exists in respect to the actual dollar amount of the charges made by its members in these transactions.

In respect to alleged abuses, a great deal has been said about improper "kickbacks" wherein the person performing the service actually remits or kicks back a portion of the fee for such service to another person who may have referred the work to him. The State Bar of Georgia has no objection to any reasonable prohibition of this practice; and we would welcome a clear anti-kickback provision. We do believe, however, that care should be exercised in drafting any such provision so as not to prohibit or discourage attorneys and others from performing ancillary and incidental work gratuitously or at low charge for other parties in the home transaction process when all parties contemplate that such attorney will be called upon to perform the actual title services. Examples may be the formation of a simple corporation for the builder, securing subdivision rezonings, filing condominium declarations, procuring additional collateral security for the lender --- in all

of which cases the ultimate cost of the final product is reduced by virtue of these services; and certainly they should not be considered as improper rebates or kickbacks merely because they occur in close proximity to the title or other settlement service. Such overly comprehensive anti-kickback provision would only serve to compel "retail fees" instead of "wholesale fees" for these services going into the construction of a house or development of a subdivision --- with consequent increased costs to the consumer.

We will touch briefly upon the respective relationships of the lawyer for the purchaser and the lawyer for the lender. The State Bar of Georgia has gone on record as suggesting that every citizen purchasing a home have his own attorney represent him in this endeavor, and we encourage any such representation of purchasers by our lawyers. Nonetheless, it is recognized that in Georgia and, we suppose, in most other states there are many real estate transactions wherein the purchaser of a house does not secure his own attorney but relies upon the services of the lender's attorney or title insurer. Our State Bar has discussed these aspects with many attorneys representing lenders who perform a large volume of residential real estate work, and it is the invariable practice among such attorneys to protect the purchaser from any harm in respect to a legal or title matter which the lawyer has undertaken to handle. While the interest of the lender in obtaining adequate real estate security for its loan is not precisely identical with the full interest of the purchaser in

buying the house and attending to the many other details connected therewith, most of which are legal -- nevertheless the real estate title problems of the purchaser are almost always identical to those for the lender. Accordingly if the purchaser intends to rely (as he quite often does) upon the lender's attorney or title insurance company for the real estate title assurances, then this reliance is not objectionable to the Georgia Bar. In passing, it might be said that in nearly two years of active discussion and research on these problems in our State, we have not heard of any instance wherein such reliance by the purchaser upon the lender's attorney or title insurer was found to have been misplaced to the purchaser's detriment.

In respect to the question as to whether the Federal Government should have a role in domestic real estate transactions we feel that any such role should be limited to the general furnishing of assistance by the Federal Government to facilitate and improve home ownership among the citizenry. This assistance should not be implemented by detailed and specific statutes and regulations to govern and control the conveyancer's art within each state (a project which probably would be termed outside the constitutional powers of Congress); but it should manifest itself more broadly in such areas as educational programs, research, financial assistance, and the like. The financial assistance (which has been the historic role of the Federal Government) should not arbitrarily modify or re-make procedures and systems of

private enterprise such as settlement and conveyancing procedures and their costs in the fifty states.

On the positive side and in addition to financial assistance, the Government's role could include the furnishing of information booklets by HUD to the purchaser - borrower (as suggested last year) (and we believe that HUD already possesses the power and legal authority to prepare and distribute such booklets). It could also include research into the feasibility of computerized land recording systems, which innovation the Georgia Bar would welcome if it became adaptable for use in our State. In financing, the Government could well consider broad new concepts of home loan guarantees regardless of the type loan, the type lender, or the qualifications of the borrowers, even including the concept of "partial guarantees" so as to encourage prudent lending as well as full lending and thereby make the lender a partner with the Government in respect to the guarantees. Research to improve analyses of the credit-worthiness of borrowers could be undertaken. These and other programs could be coordinated in an effort to increase the loan-to-value ratio permitted to lenders (perhaps 95 - 100% loans) to the point where home loans can be safely made in volume to individuals who have little cash resources with which to make the customary down payments. There are undoubtedly other broad areas through which the Government may encourage home ownership among the citizens.

The State Bar of Georgia will have no objection to, but will encourage, any such role of the Federal Government as just described.

On the other hand we believe that the Government should not become so deeply involved in the precise details of real estate transactions in all of the states as to attempt to prescribe either how such details should be carried out or for what fees, prices, and commissions such items shall be performed. The immensity of such an attempted program would appear to absolutely forbid it at the outset. The real estate laws, the land title recording systems, the professional services, the closing procedures and all aspects of real estate conveyancing differ widely from state to state; and in fact differ widely from region to region within a state. In the State of Georgia alone there are 159 counties and of course many municipalities within each county. While we have made no exact survey on this point, it is common knowledge that the professionals in many counties perform this work differently from the same type professionals in other counties and very often charge different fees than do their counterparts in other counties. The same is true in respect to the various municipalities. An attempt by Congress to specifically regulate or fix fees, area by area, would necessitate a very large staff of trained specialists to be assembled, a tremendous amount of research and gathering of statistical data to be accomplished, and a suitable, yet flexible, program to do equity to the various professions within the various areas. This assemblage of specialists would of necessity be maintained indefinitely in order to make proper modifications as the various local conditions, laws, and ordinances change. When this prospect for the State of

Georgia alone is multiplied by the 50 States of the Union, the task is indeed revealed in all of its gargantuan proportion! The cost to the taxpayer would be tremendous. The final benefit to the consumer would be, in our opinion, non-existent. Furthermore, we believe that any such "adjudication" by Government of "fair rates" for one region vis-a-vis another region will breed rivalries and a feeling of jealousy and competition. The professionals in the area which is "awarded" the lower fee will naturally file complaints with the appropriate agency seeking to secure parity with adjoining higher areas or even areas that are not adjoining and to remove such "obvious discrimination". The State Bar of Georgia may well be petitioning its own representatives in Congress for assistance in bringing the level of the Georgia attorneys up to the level of other higher states. We have no doubt but that the respective organizations in all the other 49 states would likewise be importuning their own representatives for like assistance in this regard. The entire matter could only degenerate into a "political football" which would surely occur if the Government has the authority to impose price limits so rigidly in such a vast industry (which is not the same everywhere) in every nook and cranny of the land. The ultimate result can only be to increase the low cost areas to an equality with the high cost areas; and the attempt by the Government to reduce costs for the consumer will be seen to have achieved exactly the opposite result!

We add parenthetically at this point that so

far as legal fees and title insurance charges in the insured loan field are concerned, there appears to be no necessity at all for additional Governmental regulation. For over a quarter of a century both FHA and VA have had the authority to approve "reasonable fees and charges" and to disapprove those fees and charges which are unreasonable. We have inquired from the local VA office in Atlanta as to whether or not the agency had ever exercised its authority to disapprove charges as unreasonable and we have ascertained that from time to time this office has indeed exercised such authority and has disapproved fees as being unreasonable with the result that such charge to the borrower was reduced.

The State Bar of Georgia realizes that the Government is interested in reducing the cost of housing to the consumer as much as possible. We share this interest and hope to work toward this end. We believe this goal will not be accomplished by additional Governmental regulation, by additional conditions or requirements to be fulfilled by miscellaneous parties before a transaction can be consummated, and by (as stated above) the establishment of a vast bureaucracy to establish and maintain prices in this area. Indeed we believe that the goal of reducing costs to the consumer can best be accomplished by a philosophy which is almost the opposite of that of Governmental fiat and regulation; and in order to illustrate this we would like to describe one or two situations which we have observed in our practice leading to lower costs to the consumer:

First, we believe that experienced real estate lawyers can and do perform greater services at lower cost than the non-specialist in real estate. Upon an observation of the usual procedure adopted by the experienced real estate lawyer in our area, we see that such lawyer on occasion handles from six to eight transactions in a day.- That is to say, six to eight purchasers of homes are vested with legal title to these homes on a given day through these real estate specialists. Of course this is only after many hours of work by the lawyer and his staff (including secretaries) in investigating the land records at the courthouse, in preparing the title reports, in securing the title clearances, in preparing the necessary documents, and in accomplishing all other matters leading up to the closing. The non-real estate lawyer, no matter how well educated or brilliant an attorney he may be, usually does not practice in the real estate field for the simple reason that he must expend from three to five times as many man-hours of work as does the specialist in real estate in order to accomplish the same goal of vesting the home buyer with title. In like fashion, the employees and assistants of the non-real estate lawyer, including his secretaries, are generally unfamiliar with real estate conveyancing and accordingly expend much greater time and work on a given item than do the employees of the real estate specialist. Were the non-real estate lawyer to undertake a real estate conveyance from sales contract to final closing, he would find himself underpaid, indeed, considering the hours of time expended on the project by

himself and his employees; and accordingly his charge to make this work profitable would be more than the market allows. Accordingly by virtue of competitive pressures, the great majority of all real estate conveyancing and lending transactions are handled by the experienced real estate lawyer or title insurance company.

The result of the above has been that at the present time the art of real estate conveyancing has reached a very high point of efficiency and (with relatively few exceptions) economy to home buyers generally. Any change imposed by Government on the present system should be made only after long and careful consideration lest the proposed change render present systems and procedures inefficient and costly.

It is easily seen from the above that time is precious to the real estate attorney (or title insurer) and therefore to his client, and that the profitability of his work depends upon his accomplishing within a given time a sufficient volume of transactions to justify the lower amount that he charges. Accordingly every additional document that must be prepared and every additional paper that must be signed before a closing is completed merely reduces, in the aggregate, the number of such closings that are possible to be consummated within a given time. In addition, such increased documentation has the effect of increasing the number of employees (man-hours and woman-hours),

necessary for the job, and therefore increases his overhead in the process. Accordingly his gross income is reduced and his overhead is increased, with the inevitable result that he must increase his own charge to the consumer!

A salient example of the above is apparent in the "truth-in-lending" statement which necessitates perhaps 10 to 15 or 20 minutes to prepare and to explain at the closing to the borrower. If a hypothetical real estate lawyer can average six closings per day, with each closing taking approximately one hour (with many hours of pre-closing work), and if the truth-in-lending statement necessitates only an additional 10 minutes per transaction, it can easily be seen that the attorney will lose 6×10 or one hour of his productive time -- so far as vesting home buyers with title is concerned. Accordingly his closings have decreased to five per day, his gross income has been reduced by $16 \frac{2}{3}$ percent, and yet his overhead has increased!

We thank the Subcommittee for the privilege of presenting this Statement. In conclusion we hope very much that the factors and considerations mentioned herein will be studied carefully by the Subcommittee, and that the Subcommittee will recommend against the passage of any Federal legislation which would tend to place specific limitations on settlement fees and charges in real estate transactions or which would

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tend to regulate the specifics of conveyancing procedures throughout the 50 states.

Respectfully submitted,

THE STATE BAR OF GEORGIA

The CHAIRMAN. Now, Mr. Mastrangelo.

Mr. MASTRANGELO. My name is Angelo Mastrangelo. The president of the New Jersey State Bar Association was to be here and had a prior commitment and asked to be excused. I am chairman of a special committee of the New Jersey State Bar Association which has been studying this HUD regulation since July 1972. I am authorized to speak on behalf of the New Jersey State Bar Association.

I am a practicing attorney in the city of Newark for over 17 years. And I myself have handled hundreds of residential real estate transactions.

I have submitted to the committee a statement for which I would request it be made a part of the record. I will merely summarize briefly some of the points we make.

The attorney is an essential part of a real estate settlement transaction. I have outlined his duties and his functions. These can only be performed by an attorney.

I would like to answer Senator William's comment to a prior witness concerning the closed shop transaction. This is why the lender designates the attorney. We are going to prohibit that in New Jersey. There is a regulation which I set forth in my summary which we hope will be adopted. We strongly oppose Federal rate-making of legal fees.

I refer to my entire statement and ask that it be included.

Thank you, sir.

[The complete statement of Mr. Mastrangelo follows:]

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STATEMENT OF ANGELO A. MASTRANGELO
CHAIRMAN OF A SPECIAL COMMITTEE ON
RESIDENTIAL REAL ESTATE FEES OF
THE NEW JERSEY STATE BAR ASSOCIATION
GIVEN ON JULY 30, 1973 BEFORE
THE UNITED STATES SENATE SUBCOMMITTEE ON
HOUSING AND URBAN AFFAIRS

POINT I

THE ROLE OF AN ATTORNEY IN A RESIDENTIAL REAL ESTATE
TRANSACTION IN THE STATE OF NEW JERSEY

For the average family, the purchase of a single family dwelling is probably the largest investment it will make. Should not such a family have competent, independent advice in purchasing their home and in being assured that once the investment is made, the family has all the protection it can be afforded. Such competent, independent advice can best be obtained from an attorney.

Let me briefly describe to you some of the specific responsibilities of a purchaser's attorney in a residential real estate transaction. Following a preliminary conference with the client who is purchasing the home, the attorney must review the contract to ascertain the following:

- Accurate location of property,
- Absence of objectionable rights of ways, easements and restrictions
- Compliance with the municipal zoning and building regulations,
- Uses allowed in abutting zoning districts,
- Type of utilities servicing the property,
- Validity of prior divorces,
- Physical condition of building,
- Personal property included in sale,
- Pending municipal improvements for which assessments may be levied.

Among others which may arise out of a purchase contract.

Once the contract is in proper form, an application for a mortgage must be made. This includes obtaining necessary personal and financial information to complete the application and obtaining a mortgage commitment. The next step is the title examina-

tion. Title to real estate cannot be transferred by a mere Bill of Sale. The law in the various states is such that the attorney must examine searches of the records in the municipality, County Seats, State and Federal Courts and Office of the Secretary of State in order to be certain that there are no liens against the property. If there are liens, the respective attorneys cooperate in removing the liens at or prior to closing. The attorney must also obtain a valid survey showing the dimensions of the property and the location of the building thereon to be certain the building does not violate municipal zoning or restrictions of record. The survey also determines the accuracy of the record title. If there is a conflict, this, too, must be resolved.

In most instances, the mortgage documents are prepared by the attorney who represents the purchaser. He must prepare a mortgage, note or bond, affidavit of title and other miscellaneous documents which may be required by the mortgagee. These documents are then submitted to the lender for its review and a date is fixed for closing.

The purchaser is advised of the closing adjustment and the amount necessary to consummate the transaction. The attorney also makes certain that an adequate homeowners insurance policy is obtained.

The Lender returns the documents to the attorney for the purchaser with the mortgage check and final closing instructions. In New Jersey, all parties usually appear at the closing. At the closing the various adjustments between the purchaser and seller are made including taxes, fuel, personal property purchases and the paying off of existing liens. The balance of the purchase price is then disbursed to the seller.

Subsequent to the closing all documents must be reviewed for accuracy and completion. The documents necessary to perfect title are then recorded. Relevant documents and escrow funds are forwarded to the lender.

An additional cover search is then made in order to be certain that the deed and mortgage are properly recorded and that the purchaser has good title to his property without any intervening liens. A final title insurance certificate is submitted to the title company. When the title policies are issued they are reviewed by the attorney for accuracy and forwarded to the purchaser and the lender.

The above is a very general outline of what transpires in a one-family residential real estate closing. Each item is absolutely necessary for the protection of the family. Often legal questions arise in the course of the purchase of a home which cannot be answered by a clerk or a ministerial officer. Because of the attorney's specialized training and experience, there is established a confidence in his judgment so that he is called upon to counsel the purchaser in not only the strictly legal, but also the non-legal practical problems that arise in the course of purchasing a home.

In order to make this presentation more meaningful, we prepared and had distributed a questionnaire addressed to members of the New Jersey State Bar Association. The purpose of the questionnaire was to ascertain the following:

- (1) The extent of the services performed by attorneys,
- (2) The time involved,
- (3) The attorney's fee,

POINT II`

RESULTS OF THE NEW JERSEY STATE BAR ASSOCIATION SURVEY OF ITS MEMBERS CONCERNING RESIDENTIAL REAL ESTATE PRACTICES

Average attorney hours (buyer)	9.274
Average secretary hours (buyer)	6.175
Average fee (buyer)	\$337.87
Average attorney hours (seller)	5.703
Average secretary hours (seller)	3.199
Average fee (seller)	\$218.28
Average percentage of overhead	43.377

POINT IIIREMEDIAL MEASURES TO IMPROVE THE PRACTICE OF REAL ESTATE
LAW IN NEW JERSEY

The New Jersey State Bar Association acknowledges that there are improvements which should be made in the practice of real estate law in New Jersey as it relates to the purchasers of residential real estate. The following are proposals currently under serious discussion in New Jersey.

1. Special Information Booklet: A special information booklet distributed to prospective purchasers of residential real estate would serve to inform the public about all aspects of the transaction, including the various costs involved. The booklet should generally follow the recommendations of the Senate Bill but should be written by the New Jersey State Bar Association rather than the Secretary of H.U.D. because it would thus be more clear and specific about New Jersey practice. A booklet written by the Secretary of H.U.D. which attempts to cover the different real estate practice in the 50 states would necessarily be too general to be meaningful and would defeat the purpose of educating people with regard to real estate practice in their state.

2. Advance Disclosure of Costs: Pre-closing disclosure of costs should be made in two phases to the purchasers. At least 30 days prior to the closing and before the attorney has performed any significant services or incurred any other costs, he should be required to furnish them with a written approximate itemization of the closing costs containing a caveat that certain costs, such as that for the county search, may be greater if circumstances so dictate. In addition, at least 5 days prior to the closing, the attorney for the purchasers should be required to furnish them with a complete title and mortgage closing statement setting forth in detail all adjustments between purchasers and sellers, an itemization of the exact amount of closing costs, and the amount of escrow and other charges of the lending institution.

3. Uniform Closing Statement and Uniform Terminology: There is often confusion on the part of the public and lack of uniformity on the part of attorneys with regard to "closing costs". A uniform closing statement drafted by the New Jersey State Bar Association for New Jersey attorneys would greatly improve this situation. It would make it mandatory for the attorney to set forth the total amount of his fee for the transaction under one item to be termed "attorney's fee". All other costs, such as payments to searchers, surveyor, title insurance company, and recording officer, would be itemized as "reimbursement for disbursements incurred" and would be charged to the clients on a dollar-for-dollar basis.

4. Prohibition Against Unearned Fees: All fees payable to the attorney other than those itemized in the Uniform Closing Statement described above would be prohibited. In New Jersey, the State Bar Association is working closely with the State Assembly to draft a bill regulating title insurance companies. A section of the bill prohibits the payment to anyone of unearned commissions for the obtaining of title insurance.

5. Prohibition of the "Closed-Shop" System: The most common way of representing the purchaser of residential real estate in New Jersey is known as the "approved attorney" plan. The bulk of the legal work thereunder is performed by the attorney for the purchaser who submits the necessary documents to the attorney for the lending institution for review prior to the closing. The attorney for the lender issues closing instructions to the attorney for the purchaser who then conducts the closing in his own office. The attorney for the lender generally charges from \$50.00 to \$75.00 for these services.

However, a significant number of lenders require that their attorneys supervise the search, prepare the documents, order the title insurance, and close title in their offices. These lenders inform the purchasers that the attorney represents the lender and not the purchaser and that if the purchasers desire an attorney

to protect their interests they may retain one at their own cost. In this situation, the attorney for the lender charges a full fee. In order to obtain independent counsel, the purchasers must retain their own attorney to advise them with regard to the contract, schedule the closing, and attend the closing to review the documents on their behalf, all at an additional cost to them of perhaps \$200.00. There is obviously an inequity here since the interest of the lender is completely protected under the approved attorney plan by the lender's attorney's review of the documents.

The Commissioner of Banking of the State of New Jersey has proposed a regulation which will affect all residential mortgages in the State of New Jersey, which is as follows:

"3:1-5.3 Selection of an attorney by mortgage applicant

(a) No financial institution shall require an individual mortgagor of a one-, two-, three- or four-family residence resided in or to be resided in by such mortgagor or an immediate family member to pay for legal services of the institution's counsel designated by such institution.

(b) An individual shall have the right to be represented by a qualified attorney of his own selection who has been admitted to the New Jersey bar

(c) This regulation shall not apply to a loan made for commercial purposes."

As of the preparation of this Statement the adoption of the Rule has not become effective, but it is anticipated that it will become effective.

CONCLUSION

I have attempted to set forth for you the essential role of the attorney in the residential real estate transaction. In addition, I have demonstrated by means of our survey that the attorney's fees in New Jersey are fair and reasonable in view of the services performed, time expended, and responsibility assumed. I have set forth for you the remedial measures which we advocate to further improve the practice of real estate law, measures which would serve to benefit the purchaser by increasing the pre-closing disclosure and explanation of costs and making the transaction more uniform and understandable.

In the event any study is conducted by the Secretary of Housing and Urban Development concerning real estate settlement services, then I would respectfully suggest that such a study include not only attorney's fees, which constitute a very small portion of the cost of purchasing a home, but also real estate broker's commissions, "points" paid for federally insured mortgages and the inflated cost of new and existing homes, each of which constitutes a far greater cost to the purchaser than the minimum amounts set forth above.

I wish to thank the Committee for favoring me with their attention and courtesies.

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ATTENTION !!!

There is legislation pending in Congress which could significantly affect your livelihood. It would give the Department of Housing and Urban Development the power to set **maximum** closing costs in nearly all residential real estate transactions. **THIS WILL INCLUDE CONVENTIONAL MORTGAGE LOANS AS WELL AS FEDERALLY INSURED LOANS.**

We feel this proposed federal regulation is **not** in the public interest. We believe it would have a disastrous effect on the small law firm, and could become a precedent for further encroachment on lawyer-client relationships.

Therefore, we **strongly oppose this federal action** and have created a special Statewide Committee to work with other state and local bar associations who also disapprove of such legislation. Our Committee plans to prepare a brief, but needs detailed statistical data to buttress its argument.

You alone can furnish that data. The information you supply on the following pages should also provide a solid foundation upon which the Committee can base its recommendations for the improvement of our system and the elimination of any practice unfair to the public in real estate transactions.

The questionnaire requires a donation of your most precious commodity — **YOUR TIME** — but your response is **essential** if our statistical brief is to have validity.

We ask you to do your part **NOW** by completing the survey and returning this postage-paid insert prior to March 15.

For the Committee,

ANGELO A. MASTRANGELO, Chairman

ARTHUR S. HORN, Secretary

SURVEY OF LEGAL FEES AND PRACTICE IN RESIDENTIAL REAL ESTATE TRANSACTIONS

1. My office is in _____ County.
2. I am a ☐ partner.
☐ associate.
☐ single practitioner.
3. Residential real estate transactions represent _____% of my total practice.
4. Each year I handle approximately the following number of residential real estate transactions representing the:

_____	buyer
_____	seller
_____	mortgagee only
5. The following is my best estimate in hours and quarter-hours of my time and my secretary's time in an average single family home purchase transaction, as attorney for purchaser and as approved attorney for the mortgagee:

	<u>Attorney</u>	<u>Secretary</u>
A. Preliminary conference with client regarding the transaction	_____ hours	_____ hours
B. Preparation or revision of contract including conference with broker or attorney for seller through execution of contract	_____ hours	_____ hours
C. Preparation or review of mortgage application including processing same and obtaining mortgage commitment	_____ hours	_____ hours
D. Ordering necessary searches, survey, including back title certificates	_____ hours	_____ hours
E. Review and analysis of searches or title reports and removal of title objections	_____ hours	_____ hours
F. Preparation of preliminary title insurance certificate	_____ hours	_____ hours
G. Preparation of mortgage, note, affidavit of title and other documents for closing	_____ hours	_____ hours
H. Conference with attorney for Sellers, scheduling closing, including resolution of problems relative to occupancy, repairs, etc.	_____ hours	_____ hours
I. Obtaining rundown searches, preparation for and attendance to closing of title, including making necessary closing adjustments, preparation of Closing Statements and disbursement of funds	_____ hours	_____ hours
J. Post closing submission of papers to mortgagee, recording deed and mortgage	_____ hours	_____ hours
K. Payment of and cancelling existing mortgages and liens	_____ hours	_____ hours
L. Obtaining cover searches, preparation of final title insurance certificate for submission to Title Insurance Company, ordering title policies	_____ hours	_____ hours
M. Reviewing title insurance policies and forwarding relevant documents to mortgagee and purchaser and Seller and Seller's attorney	_____ hours	_____ hours
N. Other (please explain)		

_____	_____ hours	_____ hours
TOTAL	_____ hours	_____ hours
6. My average total legal fee for the services set forth in Question No. 5 above, excluding commissions and reimbursement for searches, surveys and other out-of-pocket expenses, is \$ _____
7. I compute the fees set forth in Question No. 6 by:

hourly rate	\$ _____
average charges in my locality	\$ _____
percent of transaction	_____ %
other	_____
8. My invoice or Closing Statement does (), does not () separately set forth my legal fee and reimbursable expenses.
9. The amount of the transaction does (), does not () affect the fee I charge. If it does, it is by \$ _____

0. What is the average cost of the following out-of-pocket expenses, assuming a \$30,000 to \$50,000 purchase price.

\$ _____ county search	_____ recording fees
_____ municipal tax and assessment searches	_____ survey
_____ judgment searches	_____ title insurance
_____ foreclosure abstracts	_____ other
_____ corporate status reports	\$ _____ TOTAL

11. I first inform my clients of the fees and expenses set forth in Questions Nos. 6 and 10 at the time indicated:

- ☐ initial conference
☐ when closing is scheduled
☐ at closing
☐ other (please explain)

12. The following is my best estimate by function, in hours and quarter-hours of time devoted by me as attorney for the seller and my secretary, in a single family home sale:

	<u>Attorney</u>	<u>Secretary</u>
A. Conference with clients and broker and preparation of Contracts of Sale	_____ hours	_____ hours
B. Communications with attorney for purchaser and supervising execution of contract	_____ hours	_____ hours
C. Clearing of title objections	_____ hours	_____ hours
D. Communications with attorney for purchaser with regard to closing of matter and agreement on closing figures	_____ hours	_____ hours
E. Drafting of Deed, Affidavit of Title and other documents	_____ hours	_____ hours
F. Closing of transaction	_____ hours	_____ hours
G. Other (please explain)	_____ hours	_____ hours
_____	_____ hours	_____ hours
_____	_____ hours	_____ hours
_____	_____ hours	_____ hours
TOTAL HOURS	_____ hours	_____ hours

13. My average total legal fee for the services set forth in Question No. 12 is \$ _____

14. In representing the Seller, the selling price does (), does not () affect the fee I charge. If it does, by \$ _____

15. I compute the fees set forth in Questions Nos. 13 and 14 by the following method:

- ☐ hourly rate
☐ percent of transaction
☐ average charge in my locality
☐ Other _____

16. My invoice or closing statement does (), does not () separately set forth my legal fee and reimbursable expenses.

17. Approximately _____ percent of my gross income is absorbed by overhead.

18. I favor the following changes in New Jersey Real Estate Practice:

- ☐ uniform closing statements itemizing all charges and expenses
☐ simplified deeds and mortgages
☐ information booklets prepared for purchasers and sellers
☐ elimination of title insurance commissions
☐ elimination of the practice of the mortgagee to designate the mortgage closing attorney at the expense of the purchaser (i.e., the closed shop)
☐ Other: _____

We would appreciate your comments on this questionnaire or on any real estate matters not covered herein. What steps do you feel should be taken by attorneys, lenders, brokers, the State, or other parties to improve real estate and title work in the State of New Jersey or to make the system more economical and efficient?

The CHAIRMAN. Thank you very much.

Senator Brock, any questions to direct to any or all of these gentlemen?

Senator BROCK. Just a couple. There were two or three amendments in some of the statements today of this panel and previously. One by the previous witness suggested that we deal with the problems you mentioned, Mr. Mastrangelo, with regard to the closed relationship where the lender designates the attorney. I am interested in that. I am interested in the fact that you are by regulation or statute—

Mr. MASTRANGELO. Regulation of the Department of Banking which is supported by the State bar association both the banking law section and our committee.

Senator BROCK. Would you for the record please, if it is convenient, submit to me a copy of that regulation?

Mr. MASTRANGELO. It is in my prepared remarks, sir.

Senator BROCK. I am sorry, I did not see that.

Mr. MASTRANGELO. It was to be adopted July 25. However, the Commission is having a public hearing on August 22 this year for public comments on this regulation. And the State bar association will attend and have a delegation at that hearing.

I might point out further, Senator, that we have legislation pending in New Jersey on a title insurance bill. This bill will ultimately prohibit the payment of commissions on title insurance. Again, the consumer has been charged a commission, and an attorney retains it, or someone else, a real estate broker.

Our proposed legislation—and we have a 10-man commission in New Jersey on it now—will prohibit the payment of this commission so that the consumer will realize very substantial savings in closing costs. The commission amounts to about \$1.25 per \$1,000 of insurance. So right away, we can see a \$40 or \$50 saving.

Senator BROCK. I very much appreciate that.

Mr. CRENSHAW. Senator Brock, I would like to touch on that subject very briefly. We have one paragraph in the Georgia statement touching upon that. If I may, I would like to read it.

Senator BROCK. Please do.

Mr. CRENSHAW. Our statement on page 10 reads as follows:

We will touch briefly upon the respective relationships of the lawyer for the purchaser and the lawyer for the lender. The State Bar of Georgia has gone on record as suggesting that every citizen purchasing a home have his own attorney represent him in this endeavor, and we encourage any such representation of purchasers by our lawyers.

Nonetheless, it is recognized that in Georgia and, we suppose, in most other States, there are many real estate transactions wherein the purchaser of a house does not secure his own attorney, but relies upon the services of the lender's attorney or title insurer.

Our State bar has discussed these aspects with many attorneys representing lenders who perform a large volume of residential real estate work, and it is the invariable practice among such attorneys to protect the purchaser from any harm in respect to a legal or title matter which the lawyer has undertaken to handle.

While the interest of the lender in obtaining adequate real estate security for its loan is not precisely identical with the full interest of the purchaser in buying the house and attending to the many other details connected therewith, most of which are legal, nevertheless, the real estate title problems of the purchaser are almost always identical to those for the lender.

Accordingly, if the purchaser intends to rely, as he quite often does, upon the lender's attorney or title insurance company for the real estate title assurances,

then this reliance is not objectionable to the Georgia bar. In passing, it might be said that in nearly 2 years of active discussion and research on these problems in our State, we have not heard of any instance wherein such reliance by the purchaser upon the lender's attorney or title insurer was found to have been misplaced to the purchaser's detriment.

Now, I would like to go further and informally discuss this problem because it has been commented on before. We feel in Georgia, and I am confident the same holds true in other States, that the most economical title service to the purchaser is performed by the specialist, the expert in the field, the real estate lawyer who does nothing but real estate law.

We submit in our statement that you could get the most brilliant tax attorney, corporate attorney, or general-practice attorney in the world to perform this service, but he would have to spend from three to five times as much time and work as the real estate specialist. And accordingly, his fee would be commensurately greater.

Now, in respect to the lender designating an attorney—by the very nature of the situation, the lender must designate a specialist. If that attorney represents the lender, then he is handling the work in volume. His fee, piece by piece, is commensurately lower. And the only way he can make ends meet is by sheer volume. If we had every purchaser come into, let's say, a Federal savings and loan association—where one attorney in our office closes, sometimes six loans a day, sometimes less, sometimes more—and designate any lawyer throughout the whole area as his attorney—that lawyer has other work to do, he has to set his schedule; and it would not be possible in my opinion to close one-half as many transactions in that fashion as we do now.

If you reduced the number, if you reduced the volume, of the closings, you are going to naturally reduce the income per hour of time; and the fees to the consumer would commensurately increase.

So with apologies for my soliloquy on the subject, those are the views of the State Bar of Georgia.

Senator BROCK. Not at all. I appreciate it, but I think maybe we are raising some confusion of semantics. I think what Mr. Ballman has suggested in his testimony on page 4 is a prohibition against conditioning the mortgage loan upon the homebuyer's commitment to use a specific attorney or title company designated by the lender.

Now, I am fully aware of the need for specialization in this field.

I have tried the other route and find it wanting. But I also feel that there is a potential for abuse if the lender can say, "If you do not use my attorney, you are not going to get the loan." I think there is potential for—well I will just leave it with the word "abuse" there that I think we could preclude by saying, "shall not be a condition of the mortgage as amended."

I thought that had a great deal of merit, what Mr. Ballman suggested. And I am going to explore it further. But I am not suggesting that we say you cannot use that lender's attorney. I am saying it should not be a condition precedent to the mortgage itself.

Mr. CRENSHAW. It may be semantics. Of course, the lender has his own attorney in our State, and I am sure in all the other States. We heartily invite the borrower to be represented by his own attorney.

Senator BROCK. What I am saying is you should not require him to use the lender's attorney.

Mr. CRENSHAW. Once again, Senator Brock, we are not requiring him to use the lender's attorney, but the lender is using the lender's attorney.

Senator BROCK. The lender is. If he says, "You are not going to get a loan unless you use my attorney," then he has got him at his mercy.

Mr. RUSH. Senator, may I comment on that? I do not think he is requiring him to use it. The lender is simply saying to you in negotiating the terms of the loan, "We want our lawyers to handle this transaction for us and tell us that the title is good and supervise the handling of it." That is what he is really saying. He is not saying, "You have to use him."

Senator BROCK. There are situations where the mortgage is conditioned upon the use of the lender's attorney, I am told. Otherwise, New Jersey would not be acting to prohibit that practice. The same is true of Maryland, I gather.

Mr. BALLMAN. That is correct, sir.

Senator BROCK. I am sympathetic with what they are saying. I am not saying you should be prohibitive of using the lender's attorney if that is what you want. But I am saying the customer should have the option. The loan should not be conditioned.

Mr. RUSH. I think we probably are talking about semantics. I am sure you are not saying the lender does not have a right to have his lawyer handle the transaction.

Senator BROCK. He must have a right. I think that is what you want to say.

Mr. CRENSHAW. That is right, but, of course, as all other out-of-pocket costs, the costs are passed on to the borrower such as the survey cost, recording costs and tax and so forth.

Senator BROCK. But if a home buyer goes out and finds his own attorney, he knows full well, he is going to pay for that service. He does it in full knowledge. And that is all I want him to have is the opportunity to make up his own mind and not be dictated to.

The CHAIRMAN. I think what you are saying is it should neither be required nor forbidden to use the lender's attorney.

Senator BROCK. Certainly.

The CHAIRMAN. Senator Williams.

Senator WILLIAMS. Thank you, Mr. Chairman. Just an observation. This is about the first anniversary of Mr. Mastrangelo's appearance in my office to express the concerns of the New Jersey Bar Association in this area. I want to commend you, sir, and the New Jersey Bar Association for forward thinking and for moving forward in this area.

You described the last situation as the closed shop system. We have legislated against certain closed shop provisions of law when it is really a truly closed shop. I appreciate the fact that you have been working with the commissioner of New Jersey—

Mr. MASTRANGELO. Yes, sir.

Senator WILLIAMS. And are changing this to a buyer's option.

Mr. MASTRANGELO. A buyer's market which I feel, our committee does, the purchaser should have the choice.

The question raised earlier here this morning was the competition. Would this help to reduce fees? My answer to that is absolutely, "Yes." Where you have competition among lawyers, and let's face it, there is competition among lawyers, if the buyer is able to choose, he may get

a better deal. And this would happen if you eliminate the closed shop where the mortgagee designates and, one step further, the buyer pays for the fee of the mortgagee's attorney.

We are just going to prohibit, hopefully, the buyer from paying that fee. The mortgagees are entitled to representation, he has to pay for himself and not pass it on to the buyer. It opens up a large area for the consumer in our opinion.

Senator WILLIAMS. Thank you.

The CHAIRMAN. Thank you very much, gentlemen.

Mr. RUSH. Mr. Chairman, may I submit a statement from an independent lawyer, Mr. Phil Kappes? I asked him to submit some information on what was involved in these different services rendered and what were the diversity of conditions in different communities. I think it might be helpful to the subcommittee.

The CHAIRMAN. We shall be very glad to have it and include it in the record.

[The Kappes statement follows:]

STATEMENT OF PHILIP S. KAPPES
CONCERNING
S.2228

A BILL TO PROVIDE FOR GREATER DISCLOSURES OF
THE NATURE OF COSTS OF REAL ESTATE SETTLEMENT SERVICES
PROVIDED IN FEDERALLY RELATED MORTGAGE TRANSACTIONS
AND OTHER PURPOSES.

I. The Problem.

- A. Kickbacks or payments to various parties to the real estate closing in exchange for "steering" business to the compensated party, rather than payment for services actually performed.
- B. Inadequate or non-existent advance information to buyer or borrower concerning the amount or nature of the closing charges.
 - 1. Example: Buyers or borrowers frequently pay for title services believing that such services are for their individual benefit when, in fact, it is not.

II. What are "closing costs"?

- A. Narrowly; The charge made for:
 - 1. The service of assembling all the necessary ingredients to effect transfer of a land title and/or to perfect a security interest therein.
 - 2. Supervision of the execution of the supporting documents.
 - 3. Verifying performance of all conditions of sale or lending.
 - 4. Receipt and disbursement of funds.
 - 5. Recordation of necessary instruments.
 - 6. Ordering and delivery of final instrumentation such as final policies of insurance, etc.
 - 7. Delivery of documents to parties entitled.
- B. Broadly; The charge made for:
 - 1. All costs specified in II A above.
 - 2. Discount points or similar charge.
 - 3. Real Estate agent's commission.
 - 4. Escrow for taxes, hazard and FHA of VA (if any) insurance.
 - 5. Loan origination fee due lender.
 - 6. Survey.
 - 7. Appraisal.
 - 8. Credit report.
 - 9. Title insurance or abstract and attorney's opinion.
 - 10. Escrow fee.
 - 11. Recording fees.

III. Problem not solved by regulating of setting closing costs because;

- A. Closing cost regulation is not feasible at the federal level because:
 - 1. Closing practices are not uniform throughout the country.
 - a. Land titles originate variously from English, Spanish and French land grants, from treaties between the U.S. and other nations and from patents issued by the U.S.
 - 2. Examples of lack of uniformity and the underlying reasons therefore.
 - a. Rights of Dower and Curtesy (the interest of one spouse in the real property of the other) vary widely. Thus in some states the wife must join her husband in conveyancing, in others it is not required.

- b. Some states require deeds to be witnessed and acknowledged (notarized) others do not.
 - c. Some states utilize mortgages (conveyance on condition) for evidencing security for loans, others use trust deeds. Both accomplish the same purpose but by diverse means.
 - d. Closings in some states are done by a meeting of the parties where closing documents are exchanged. Others accomplish the same result by use of an escrow agent who receives the documents, performs certain services, such as verifying title, completing recordings, etc. before distributing documents of the proceeds of sale to the proper parties.
 - e. Standards of title, that is the quality of a title required to satisfy the ordinary purchaser or lender varies widely from state to state, not only because of the diversity of the source of land titles (see III. A. 1. a. above) but because of essentially local usages and trade practices. Moreover these variances occur from county to county within a single state, from lawyer to lawyer, from title insurance company to title insurance company, and from lending institution to lending institution within a single locality. (The commissioners on Uniform State Laws are now considering a uniform act designed to establish uniform title standards throughout the several states.)
 - f. The degree of effort required to procure title information (abstracts) whether for a lawyer or title insurance company also varies from state to state. Some states have the public records organized according to tract indexes. That is all transactions affecting a particular tract are gathered together in a key or index related to such tract. Other states use grantor-grantee indexes thus keying the title information to the persons names appearing on recorded deeds.
3. Examples of lack of uniformity within a single state.
- a. Some locales permit and others prohibit the use of title insurance. Some require an abstract and supporting attorney's opinion. Still others require both title insurance and an opinion.
 - b. Lending institutions and realtors all have regulations or closing practices peculiar to their own particular operations, usually resulting from variance in the extent or degree of sophistication of their respective lending or real estate activities. They may require widely variant covenants from seller or borrower or supplementary certifications or assembly of data to protect buyers or lenders which are not found in all such transactions. Particularly in smaller communities.
 - c. The numbers of transactions also affect the cost of procuring title information (abstracts). Thus searching and abstracting title information in a populous metropolitan area will be substantially greater than in a small county seat community, simply because there are fewer numbers of entries in the public records which must be examined and

- included or excluded from the chain of title.
- d. Moreover the small community has fewer public improvements, hence fewer assessments, fewer encumbrances on title. It has less sophisticated zoning and anti-pollution regulations all of which affect title. It has fewer special use districts such as public works, sanitary, health and hospital, etc. Thus the small community has fewer records to examine and the cost of verifying the status of title is substantially less.
- 4. Examples of lack of uniformity from one transaction to another.
 - a. Defects in a chain of title may require extensive work for correction in one case, whereas no corrective effort is required in the case where the chain is free of defects.
 - b. The degree of cooperation of the parties, the insurer in providing promptly and efficiently the casualty insurance, the surveyor in providing timely service, the parties in making themselves readily available for closing, the lender in having his funds and required closing papers ready on time. If all these factors don't "jell" at one time a closing may be set and postponed several times in one transaction. This costs money. This increases the cost of one closing over another.
- 5. The foregoing enumeration of diversity in real estate practices is, by no means, exhaustive. It merely shows that diversity exists, and for very practical and legitimate reasons.
- 6. The diversity has a direct bearing on the costs involved in a real estate closing.
 - a. An escrowed closing requires greater time input than a non-escrowed closing.
 - b. Ease of procuring title information may be favorable or unfavorable from a cost standpoint.
 - c. The adequacy or inadequacy of the public records adds to or reduces cost.
 - d. The degree of cooperation of the parties renders the closing simple or time consuming, thus affecting costs directly.
- 7. The person, firm or corporation performing closing services must receive fair compensation for these services.
 - a. His legitimate costs must be covered in the fee charges. These costs are related to whether one refers to the narrow or broad concept of what is included in closing costs.
 - i) In many instances the closer does not set to cost, he merely ascertains the amount thereof from others, i.e. for casualty insurance, surveying, legal, credit reports, etc.
 - ii) Where the numbers of documents is greater (as in the sophisticated community) the cost of closing is greater, because it takes more time, and greater responsibility is assumed.
 - b. His compensation must be related to the degree

of responsibility he assumes.

- i) Some closings are guaranteed, i.e. if an error is made, the closing agent must pay back the purchase price or repurchase the loan.
- ii) Other closings don't require repurchase, but merely the correction of any defect in the closing procedure.

c. Lack of proper compensation will result in:

- i) Termination of closing services, or
- ii) Driving out of skilled closing service personnel in favor of the unskilled who may perform the service for inadequate fees, "skimp" on service and quality, and thus expose the public and lending institutions to great risk of loss.

B. Regulation of the broad spectrum of closing costs entails regulation of the insurance industries (casualty and title) when they are already subject to extensive state regulation; regulation of the fee charges of the legal profession when lawyers are already bound by codes of ethics and disciplinary commissions usually supervised by the Supreme Courts of the states. In addition such regulation would encompass the land surveyors, credit reporting agencies, escrow and trust institutions, recorders, real estate agents and others. The problem does not demand the superimposition of an extensive federal price fixing scheme over industries and professions already subject to proper and effective regulation within the several states.

C. Extensive federal regulation attacks the symptoms and not the disease.

IV. Solution.

A. Enactment of legislation embodying the principles of S. 2228.

B. This legislation attacks the disease by:

- 1. Prohibiting "kickbacks".
- 2. Making uniform the statement of settlement costs.
- 3. Requiring the seller, lender of closing service fully to inform buyer or borrower of his rights and obligations by advanced disclosure of the nature and amount of the various closing cost factors to which he is subject in buying or financing the purchase of a home.
- 4. Recinding the HUD rate making authority with regard to closing costs.

V. Credentials. Philip S. Kappes

A. Practicing Lawyer for twenty five years.

B. Partner in twelve man law firm engaged in the general practice of law in Indianapolis, Indiana.

C. Education

- 1. Undergraduate: Butler University, Indianapolis, Ind.
- 2. Legal: University of Michigan

D. Served as:

- 1. President, First Vice President, Treasurer and member of Board of Managers of the Indianapolis Bar Association.
- 2. Member, House of Delegates of the Indiana State Bar Assn, and past member House of Delegates of the American Bar Assn.

E. Member:

- 1. Real Property Sections of Indiana and American Bar Assns.
- 2. Chairman, Lawyers Title Guaranty Fund Committee, American Bar Assn.

1973

- F. Treasurer and Member of Board of Directors of National Attorneys Title Assurance Fund, Inc for fourteen years. (A title insurance corporation)
- G. President, Attorneys Title Services, Inc. Indianapolis, Indiana. (Recently organized to provide land title searches and closing services in Marion County, Indiana).

The CHAIRMAN. This concludes the witness list. The committee stands in recess until 9:30 tomorrow morning which will be the last day of these hearings.

[Whereupon, at 12:35 p.m., the subcommittee recessed, to reconvene at 9:30 a.m., on Tuesday, July 31, 1973.]

[The following statements concern matters discussed at today's hearing:]

1975

STATEMENT OF THE
UNITED STATES SAVINGS AND LOAN LEAGUE

TO

SENATE BANKING, HOUSING AND URBAN AFFAIRS COMMITTEE

Re: Mortgage Settlement Costs

August 13, 1973

The United States Savings and Loan League* is pleased to submit its views concerning S. 2228, introduced by Senator Brock, and S. 2288, introduced by Senator Proxmire, dealing principally with settlement costs and procedures in "federally related mortgage transactions". We are mindful that this Committee received testimony at the hearings held by this Committee on July 30, 1973, on Senator Brock's bill (S. 2228), and that a copy of Senator Proxmire's bill (S. 2288) was not available until after the hearings were concluded.

At the outset, it is our view that appropriate disclosure in the form of comprehensive settlement statements and informational booklets which furnish adequate explanation to home buyers and borrowers are in the public interest. We support legislation designed to accomplish these objectives. We believe, also, that referral fees and like charges borne by home buyers and borrowers, which do not represent legitimate services actually rendered in connection with title or mortgage closings, constitute an undue financial burden and should be prohibited. Additionally, while we do not believe the practice of charging fees for the preparation of Truth-in-Lending statements

* The United States Savings and Loan League has a membership of 5,000 savings and loan associations, representing over 95% of the assets of the savings and loan business. League membership includes all types of associations - Federal and state-chartered, insured and uninsured, stock and mutual. The principal officers are: Richard G. Gilbert, President, Canton, Ohio; George B. Preston, Vice President, West Palm Beach, Florida; Tom B. Scott, Jr., Legislative Chairman, Jackson, Mississippi; Norman Strunk, Executive Vice President, Chicago, Illinois; and Stephen Slipper, Legislative Director, Washington, D.C. League headquarters is at 111 East Wacker Drive, Chicago, Illinois (60601); and the Washington Office is located at 1709 New York Avenue, N.W., Washington, D.C.; Telephone: 785-9150

is widespread, we agree that no special charge or fee should be made for the preparation of the statement, even though lenders incur additional costs in preparing and furnishing these disclosures.

The legislation introduced by Senator Brock meets many of these criteria. The sections of the bill dealing with the development of a uniform settlement form with variations for differences in different regions of the country, together with the provisions and distribution of special booklets designed to inform buyers and borrowers completely about the nature and purpose of each cost of real estate settlements, and the requirement to provide an adequate and itemized disclosure of each settlement charge would seem to accomplish many of these purposes.

With respect to the itemized disclosure of settlement costs, section 104 of the Brock bill would require that these disclosures be made "at least 10 days prior to settlement". We have serious objection to this 10 day period for the following reasons: As we understand the bill, since the Truth-in-Lending form will be attached to the settlement cost disclosure form, then the Truth-in-Lending statement will in effect have to be provided 10 days in advance of settlement. This changes the "rules of the game" as provided in the Truth-in-Lending statute and regulations issued by the Federal Reserve Board, and further can have the effect, as will be explained below, of requiring disclosures to be made on more than one date to the same borrower or borrowers.

Perhaps the best way to explain our position is to suggest the following solution. The Truth-in-Lending disclosures today are made at or before "consummation" of the loan transaction. This means that mortgage lenders in many cases are providing the Truth-in-Lending statement upon "commitment", which of course can be many days, weeks, or even months before settlement. In other cases when commitment is either not involved or under State law does not constitute

"consummation", the Truth-in-Lending disclosures also are usually made before but obviously no later than settlement. We suggest, therefore, that the Brock bill either provide a definition of "consummation" of the loan transaction or leave the matter of definition, as under the present T-I-L law, to HUD and/or the Federal Reserve Board so that at least all required disclosures, whether for Truth-in-Lending or for itemized settlement charges will be given at the same time and only one time. We believe strongly that in the case of mortgage credit all prescribed disclosures should not be required to be made until on, or before, the date of "consummation".*

One other aspect of the Brock bill, prescribing that the uniform settlement form also include all information required to be furnished under the Truth-in-Lending Act and that such action be used in satisfaction of disclosure requirements of that Act, seems to us to be a desirable dual objective. On its face, it might be helpful in eliminating duplicate disclosure of basically the same information. We are informed, however, that operationally some practical difficulties may be encountered. Perhaps the feasible manner of dealing with this matter is that the legislation give HUD and the Federal Reserve wide discretion to attempt to design a "combined form", but eliminate the mandatory provision if the "combined form" is found to be unworkable or impractical.

The Brock bill also meets some of the objections raised to earlier "kickback" proposals that the language was unclear, and in some respects, vague. As now proposed, it would prohibit any kickback or fee pursuant to any agreement that business incident to or a part of a real estate settlement involving a "federally related mortgage loan" be referred to any person.

* See Bissette v. Colonial Mortgage Corporation of D.C., 340 F. Supp. 1191 (D.D.C. 1973), reversed __F. 2d__ (D.C. Cir. 1973); Stavrides v. Mellon National Bank & Trust Co., 353 F. Supp. 1072 (W.D.Pa. 1973).

Further, it would prohibit anyone from giving or accepting any portion, split or percentage of any charge made in connection with such settlement, other than for services actually performed. Specifically excluded from these prohibitions, however, would be the payment of fees to (1) an attorney for services actually rendered; (2) to a title company or its agents for services performed; or (3) by a lender to its duly appointed agent for services performed in the making of a loan, or the payment of a bona fide salary or compensation for goods or facilities actually furnished or services performed. We believe this accomplishes the purpose of eliminating kickbacks and referral fees while, at the same time, recognizing the propriety of payments made for legitimate services performed.

We believe the Brock bill could be improved by adding certain provisions found in the Proxmire proposal. For example, Senator Proxmire's bill contains provisions which we support that would prohibit any charge or fee for the preparation of the Truth-in-Lending statement, and would authorize HUD to establish and place in operation on a selective pilot basis a computerized system for land recordation. This pilot project to be carried out in various representative political subdivisions is designed to simplify land transfers and mortgage transactions. We believe that such a project can be a basis for developing a national system of land recordation that will have enduring effects on reducing the expense of title and mortgage closings.

Another provision of the Proxmire bill, however, raises a serious question. Under that bill HUD would be authorized to set the maximum amount of allowable settlement costs which could be charged in each section of the country. We believe that any attempt to get at the problem of settlement costs by means of Federally-imposed mechanisms is certain to be less effective than other possible methods. Further, such federal control would place an unfair

burden on thousands of savings and loan associations, other mortgage lenders and their customers where the present charges are fair and reasonable. If past and somewhat recent history is any guide, the imposition of maximum prices or rates frequently result in these ceilings becoming the floor. Such action, which in effect is another federal price control mechanism, thus would afford the buyer-borrower no real financial benefit. Lack of uniformity arising from variations in the custom usage of recordation systems from State to State and in some areas from county to county and from city to city, within the same State contribute more to irregular patterns of closings costs than almost any other factor coming to mind. That is principally why we unequivocally support the pilot computerized land transfer recordation study. We believe, until a more uniform system is established, any attempted administrative fiat to fix maximum settlement costs would be self-defeating.

Thank you for affording us this opportunity to submit our comments with respect to the Brock and Proxmire bills.

1980

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Shirk, Reist and Buckwalter

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K. L. SHIRK, SR. (1915-1956)

KENELM L. SHIRK, JR.
ROGER S. REIST
RONALD L. BUCKWALTER

RICHARD B. POSEY

STATEMENT
of
KENELM L. SHIRK, JR., ESQ.
to
SENATE BANKING, HOUSING AND URBAN AFFAIRS COMMITTEE
July 30, 1973
ON HOUSING AND URBAN DEVELOPMENT LEGISLATION

Consumers will be subject to even greater pressures and will lose the minimum protection they now have through lawyers if minimum fees in the neighborhood of \$10.00 to \$40.00 are established for federally related real estate transactions.

"Country lawyers" in communities such as Lancaster, Pennsylvania, and smaller communities will be the subject of much unintended discrimination, if such a bill becomes law.

Such legislation tends to eliminate completely lawyers from residential real estate settlements, especially in the small towns and rural areas where lawyers are now the very foundation of most of the settlements. This is especially true, if the bill covers loans from local banks or savings and loan associations.

The committee may have been given some incorrect statistical data as to closing costs. Some of this data tends to "mix apples and oranges".

1981

In Pennsylvania, for example, there is a 2% Real Estate Transfer Tax imposed upon real estate transactions by state and local governments, which I am advised is included as a closing cost in the data that has been presented to the committee.

Moreover, it should be noted that the largest single item at settlement for real estate is the fee of the real estate broker. This is usually a fixed percentage fee, not based on his expenses or his responsibility. Further, there is usually a minimum of \$600.00.

In addition, it should not be overlooked that the requirements for approval of loans from the Housing and Urban Development Department create costs for real estate settlements. Examples of these are the fees for property and termite inspection.

These have been required by the department's own appraisers in some cases. They insist that these inspections take place as conditions of the approval of the loan. I have been advised that in the computations presented to the committee, these fees were included as part of closing costs.

Reforms are needed in our real estate conveyancing system to save human effort and protect consumers. I have been working for these for well over ten years.

There is no doubt whatsoever that we do need to modernize our land registration system. In Pennsylvania some of this can be accomplished by relatively innocuous amendments to our statutes --

without even considering some ideas being presented to your committee for computerization, marketable title legislation, and the like. Much of this future legislation also deserves to be implemented.

Rebates from title insurance (when used) should be abolished. Lawyers under the Canons of Ethics should and must credit these to their clients and tell the client about them. Real estate men are not so required and do not.

What your legislation should not do, however, is place the consumer at the mercy of a real estate salesman or broker, who is eager to complete closing in order to get a commission. Such a broker or salesman is not always concerned about problems with the title, questions of the consumer about land or deed restrictions, problems relating to condition of the premises, and so forth. Some want the settlement completed without delay or spending time on matters the consumer needs to know.

Nor is it wise to place the consumer at the mercy of the title insurance companies. Even the most ethical of these companies is under pressure from the real estate salesman to insure that the salesman will continue to bring business to them.

It is similarly unwise to place the consumer at the mercy of the mortgage company. Such companies are interested in a certain amount of protection as to marketability of title, but they are not always interested in those items which affect the consumer and his personal use of the property.

What is needed now is more help for the consumer, not less.

Lawyers can provide that help and will do so, if they are fairly and adequately paid. I have no objections to limits on the charges for legal services relative to HUD realty transactions, as long as these limits are reasonable and consider the variety of responsibilities of the lawyer depending upon the transaction.

A special problem arises in developing consumer protection and new approaches to land sales transactions, in that the control of the real estate sections of state and national bar associations generally seems to be vested in those who are not really concerned with this problem. Many of those who head up the real estate sections are men from big city law firms which do not even handle residential real estate matters.

For example, the Pennsylvania Bar Association leader in this matter is the former president of a title insurance company. He is a very respectable, honest gentleman whom I am sure would not misrepresent the cause; but he does have a vested interest in title insurance.

Another example in Pennsylvania is the law firm which has studied this subject matter and has made recommendations to the Pennsylvania Bar. It admittedly does not engage in residential real estate transactions (except as a courtesy to their corporate clients).

1984

The "country lawyer" and his clients need your protection.

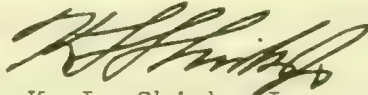
In essence, the proposed legislation appears to drive the lawyers out of the residential real estate legal business and thus to put the consumer (especially in rural areas where title insurance is not now involved) at the mercy of others.

We lawyers may need regulation. It may be very helpful to others to regulate us. There may be some of us who have taken advantage of people, even in residential real estate transactions. This seems unlikely here with all the competition we have. However, this surely does not justify your depriving the individual consumer in the smaller cities, small towns and rural areas of the necessary expertise of an attorney in residential real estate transactions.

Respectfully submitted,

SHIRK, REIST AND BUCKWALTER

By



K. L. Shirk, Jr.

KLSJr/sac

1985

ALSPACH AND RYDER
ATTORNEYS AT LAW
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ALFRED C. ALSPACH
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ELIZABETHTOWN PA OFFICE
23 SOUTH MARKET STREET

STATEMENT OF ALFRED C. ALSPACH
TO SENATE BANKING, HOUSING AND
URBAN AFFAIRS COMMITTEE

In connection with hearing July 30, 1973 relative to Housing and Urban Development Legislation:

There is a wide variance between real estate practice in the large urban areas of Pennsylvania (such as Philadelphia and Pittsburgh) and the remaining portions of this Commonwealth where the bulk of attorneys practice. The number of lawyers practicing in each of these smaller counties ranges from five to several hundred.

It is difficult to establish any rule of thumb which could apply to all cases or measure the adequacy of compensation therefor. In some counties, sub-surface rights are involved (coal regions). In other counties, agricultural and farm problems and time honored customs are important. Transfer of titles requires considerable conferences leading up to the preparation of an agreement and ultimate sale, involving crops, planting of the future crops, sales of personal property.

Many problems do not cease with the signing of the deed. Questions involving deferred possession, guarantees of equipment and fixtures in the house, planting, repairs and the like result in calls to the attorney long after the deed itself is recorded.

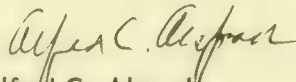
An effort to reduce settlement costs (which is laudable) should consider matters not within the control of the attorney. In this county (Lancaster) the prevailing real estate brokers commission ranges from 7% to 10%, payable by the seller but it's usually indirectly by the buyer. There now exists two realty transfer taxes totalling 2%. This is statutory.

When these charges are included in overall settlement costs, the resulting percentage relating to purchase price is obviously out of line in comparison to other areas.

A rural lawyer and his clients are the ones that need the protection. Most of the areas in this state are not served by title insurance companies and the title work is done by the lawyers. I submit that the charges for title searches are less than Davis-Bacon Act prevailing wages.

1986

We do not need Federal legislation to fix these charges. Our bar associations are working on these problems in both the local and state level. There is current legislation pending in the General Assembly of Pennsylvania which will assist. We should not add government bureacracy, red tape and a hodge-podge of government regulations to the present list of things which must be done and paid for by the property purchaser.


Alfred C. Alspach

ACA/sg

1987



National Pest Control Association

THE BUETTNER BUILDING
250 WEST JERSEY STREET
ELIZABETH, N. J. 07207
201-354-3738

August 2, 1973

Honorable John Sparkman
Sub-committee on Housing and
Urban Affairs
Dirksen Senate Office Building
Room 5226
Washington, D. C. 20510

Dear Senator Sparkman

We write with reference to hearings held recently on the "Omnibus Housing Bill." Although we are aware that the hearings covered a multitude of subjects, we draw your attention to HUD and Senate proposals which would set maximum rates in four major metropolitan areas for certain costs involved in "closings" of home sales. Of specific concern to us are the maximum rates for "pest and fungus inspections." We limit our commentary to this issue as described in Section 701 of the Emergency Home Finance Act of 1970 and subsequent regulations developed by HUD in 1972, and Section 712 of S. 3248.

General Comments

The proposed approach to this matter does not manifest a clear understanding of what is involved in "pest and fungus inspections."

The basic presumption seems to be that all houses are alike in every way and a flat rate ceiling can be applied. It is inconceivable to us that the same rate could be charged for a (e.g.) 1,000 sq. ft. CBS dwelling as for a 4,000 sq. ft. structure with intricate crawl spaces including attics and numerous other complicating factors.

Specific Reservations

If permitted in the four areas specified we envision the following:

- 1) A reduction in the quality of such inspections. This would be unfair to the consumer.

- 2) A reduction of the number of companies engaged in this service.
- 3) "Shopping" on the part of realtors to secure inspection clearances. If the service supply dries up, realtors will be driven to this.

Need Not Demonstrated Clearly

We fail to see substantiation of the need for these ceilings in the proposed rulemaking documents. We see no evidence of exorbitant prices currently being charged for these services in the markets in point. We fail to comprehend the reasoning behind HUD's position and that put forward in subsequent Congressional bills.

Anticompetitive

Pest inspection services are provided by businessmen engaged in free enterprise. Competition is a natural price regulator.

What is proposed on this matter is not in the best spirit of competition. Services of our industry are not comparable to utilities and should not be so regulated.

Precedent

We do not believe that once initiated, the proposed limits would be restricted to the markets described for long. It would only be a matter of time until they would be nationwide. By then the magnitude of the problems would be great.

Recommendation

We endorse the concepts tendered in the "Stephens Substitute" (H.R. 16876).

We feel that properly educated and informed homebuyer will be the greatest vehicle possible to avoid abusive closing costs. H.R. 16876 provides for this appropriately.

Summary

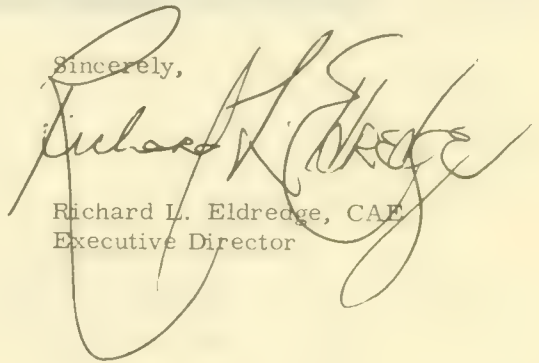
We do not advocate perpetuation of situations that are unfair to the consumer. At the same time, we do not and cannot support regulation that is by its nature anticompetitive and contrary to free enterprise.

1989

We feel that H.R. 16876 protects the consumer if he is willing to work in his own interests and does not penalize private enterprise.

We would be privileged to elaborate on our positions if it would so please the committee.

Sincerely,

A large, stylized handwritten signature in dark ink, likely belonging to Richard L. Eldredge, is written over the typed name and title.

Richard L. Eldredge, CAF
Executive Director

RLE:ecm

Enclosure: Description of NPCA

cc: Executive Board
Hon. Robert G. Stephens, Jr.
Sharon, Pierson, Semmer, Crolus and Finley
Guidelines Committee
WDO Committee
Honorable Sam Nunn
Hon. Lawrence J. Hogan
Hon. Herman Talmadge



National Pest Control Association

THE BUETTNER BUILDING
250 WEST JERSEY STREET
ELIZABETH, N. J. 07207
201-354-3738

Description of the National Pest Control Association and the Structural Pest Control Industry

Approximately 7,000 structural pest control companies employing over 30,000 workers are engaged full-time in the application of pesticides for the protection of the health and property of the citizens of the United States in the urban industrial sector. In addition, there are several thousand individuals who engage in part-time applications of pesticides. National Pest Control Association, Inc. (NPCA) represents 1,500 full-time companies engaged in this field, which combined, generate over 60 percent of the revenues in the industry. Although most companies in our industry employ 3-5 people, there are numerous companies employing in excess of 100 individuals.

NPCA is recognized as the only significant national source of continuing information on structural pest control training, techniques, operation, and management. Our Service Letters, Technical Releases, Good Practice Statements, Serviceman's Training Program and other educational services are widely used by our industry and governmental units for continuing education in structural pest control.

In addition, there are more than 40 state and metropolitan associations of pest control operators affiliated with NPCA. Impressed with the fact that responsibility to the public is our foremost consideration, the Association has a thorough "Code of Ethics" with which members must comply.

As members of our Association and industry serve nearly 10 million dwellings annually as well as most of the 240,000 retail food outlets and 400,000 commercial restaurants and kitchens, we are appropriately preoccupied by our responsibility as an Association and industry.

1991



OHIO STATE BAR ASSOCIATION

Ohio Legal Center

Thirty-three West Eleventh Avenue
COLUMBUS, OHIO 43201

TELEPHONE 614 421-2121

OFFICE OF THE PRESIDENT

WALTER A. PORTER
390 TALBOTT TOWER
DAYTON, OHIO 45402

August 11, 1973

The Honorable John A. Sparkman
Chairman, Committee on Banking,
Housing and Urban Affairs
United States Senate
Washington, D. C. 20510

Dear Senator Sparkman:

I am writing as President of the Ohio State Bar Association to convey the Association's views on S. 2288, a bill to regulate closing costs and settlement procedures in federally related mortgage transactions. We appreciate the opportunity to submit a statement for the record and regret that time will not permit testimony by the Association on this most important matter.

The Ohio State Bar Association shares the Committee's concern that all consumers be protected from unreasonably high settlement charges, irrespective of their causes. During the past ten years, the Association has actively promoted and achieved enactment in Ohio of legislation which has greatly simplified land conveyancing. These reforms in Ohio's land laws have had the dual effect of reducing legal expenses incident to land transactions and enhancing the certainty and security of land titles.

On the basis of the Association's and the State of Ohio's experiences, I am constrained to advise you of our view that certain provisions of S. 2288 may do more harm than good to the interests of the very consumers it is intended to protect.

In the first place, S. 2288 would authorize regulation of legal fees, but it would virtually ignore one of the most significant components of real estate transaction costs--real estate brokerage commissions. It is not our purpose to characterize real estate commission rates and charges as too high or too low, but we note that real estate commissions loom much larger in the spectrum of Ohio real estate settlement charges than do legal fees.

This bill deals incompletely with the several component costs of settlement charges, so it is inevitable that the burden of reducing settlement charges will fall disproportionately upon those who are singled out for regulation under its provisions. We believe this result is unreasonable and unwise. One of the likely consequences of S. 2288 may be to reduce legal fees to levels below the cost of providing legal services. Thus, the provisions of the bill which would give the Secretary of HUD authority to set limits on charges made by attorneys for legal work incident to real estate transactions well could have the unintended consequence of denying consumers--and especially low- and moderate-income consumers--the protection of their investments in residential real estate which competent legal advice and assistance affords.

In our view, the chief shortcoming of S. 2288 is that it attempts awkwardly and indirectly to solve a problem which better could be solved through a direct approach. In our view, it would be preferable to examine all of the practices and factors which can contribute to unreasonably high settlement charges, to examine fully the alternatives, and to tailor a solution to the problem. Needless to say, that solution should serve the interests of consumers in reducing unreasonably high settlement charges, but not at the expense of increased risks of loss or expense resulting from handling of real estate transactions. In this connection, we note that Section 11 of S. 2288 calls for demonstration of a computerized system of land recordation in a manner calculated to facilitate and simplify land transfer and mortgage transactions and reduce the costs thereof. We feel this approach to real estate transactions is too simplistic, and the ease with which computerized data can be manipulated raises serious questions whether permanent land records should be made so susceptible to alteration, damage or destruction.

As an alternative to Section 4 and to the demonstration project authorized by Section 11, the Ohio State Bar Association recommends that consideration be given to establishing a body to conduct a detailed one-year examination of real estate transactions and charges with a view to determining how land transfers and mortgage transactions can be facilitated and simplified. In addition to examining questions of costs connected with real estate transaction practices, the study should give careful attention to the risks connected with land transfers and mortgage transactions and how those risks to the consumer can be minimized.

1993

Again, may I thank you for the opportunity to make these thoughts known to you and your Committee on behalf of the Ohio State Bar Association. I am certain that there are other comments which should have been addressed to other aspects of the bill and I regret that the shortness of time has made it impossible to consult fully with other members of the Association who are expert in these matters.

If you desire any further comments on this legislation from the Association, or if there is any other way in which we can be of assistance to you, please let me know.

Very truly yours,


Walter A. Porter

WAP:lmg

cc: Members of Committee on
Banking, Housing and Urban Affairs

Hon. William B. Saxbe

1994



TITLE INSURANCE COMPANY OF MINNESOTA

DEAN T. LEMLEY

REGIONAL VICE PRESIDENT

July 9, 1973

Mr. Robert A. Taft, Jr., M.C.
Senate Office Building
Washington, D.C. 20510

Dear Senator Taft:

I have been informed that one item of consideration to come before the Senate Banking Committee at its July 16, 1973 meeting concerns the establishment of rates for title search, surveys, and risk rate premiums for Title Insurance in connection with government insured loans.

Enclosed herewith, for your information is a "Schedule of Rates for Title Insurance in Ohio" effective as to applications filed on and after December 1, 1972.

I recognize the onus cast upon our industry some years ago by certain unscrupulous attorneys and agents in the Washington D.C. - Maryland area, but this is no reason to penalize an otherwise highly ethical industry.

In our own State of Ohio the risk rate for title insurance has not been increased for over 25 years. The work charges have not increased with costs, and only through sincere efforts by Agents and Underwriters in efficiency of operations has the profit picture been maintained.

Our industry, at the request and direction of the Director of Insurance has retained the prestigious firm of Arthur D. Little and Associates to prepare statistical data for the Insurance Department. We have voluntarily proposed and accepted regulation by the State.

The Ohio Title Underwriters Association, the Ohio Land Title Association, and the Ohio Title Insurance Rating Bureau have consistently cooperated with the Department of Insurance to promote forms, practices, and ethics for the public good.

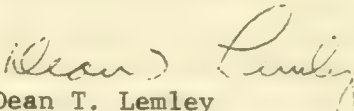
I feel that Public Law 15 authorizes State Regulation of insurance and is a sound rebuttal against Federal intervention into land title insurance transactions. I further feel that state

1995

regulation is a most effective tool in the protection of the consumer. I feel further that Senator Proxmire's attack upon our industry is generally unwarranted.

I will personally appreciate your recognition of our industry, its problems and its close adherence to State regulation, and defeat attempts to regulate us at the Federal level.

Very truly yours,


Dean T. Lemley
Regional Vice President

DTL:bm

Enc.

1973 HOUSING AND URBAN DEVELOPMENT LEGISLATION

TUESDAY, JULY 31, 1973

U.S. SENATE,
SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS,
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS,
Washington, D.C.

The subcommittee met at 9:40 a.m., in room 5302, Dirksen Senate Office Building, Senator John Sparkman, chairman of the subcommittee, presiding.

Present: Senators Sparkman and Williams.

The CHAIRMAN. Let the committee come to order, please.

Our first witness this morning is our colleague, Senator Jacob Javits, U.S. Senator from New York.

Jake, glad to hear from you.

STATEMENT OF JACOB K. JAVITS, U.S. SENATOR FROM THE STATE OF NEW YORK; ACCOMPANIED BY CHARLES WARREN, LEGIS- LATIVE ASSISTANT

Senator JAVITS. Thank you very much, Senator and Senator Williams. Before I start, I understand that this morning is devoted to housing for the elderly and note that a number of distinguished New Yorkers are testifying. I would like to commend them to the committee.

Mr. H. Ted Olson, executive vice president, American Association of Homes for the Aged, who is accompanied by Mr. Jacob Reingold, executive director of the Hebrew Home for the Aged in Riverdale, N.Y. I happen to know that home very well and it is a magnificent institution. Also you will hear from a distinguished authority in the field of conservation from New York, William H. Whyte, trustee of the American Conservation Association.

I note that our old friend Bill Hutton is going to testify before the committee, and I am sure the committee will give everything he says very close attention.

Mr. Chairman, I am here to do three things:

Ane, call attention to the very serious blow to housing which resulted from the moratorium and the jeopardy to the American commitment to provide a decent home for all Americans. This commitment goes back to 1949 when I managed the Taft-Ellender-Wagner bill in the House of Representatives and succeeded with the aid of 29 Republicans in getting it passed.

(1997)

Second, Mr. Chairman, to recommend to the committee two measures, one measure to deal with neighborhood conservation which we consider very important for big urban centers like New York City, and the other to deal with standards and technological advances in the building field, a matter of longstanding interest to me.

These measures, Mr. Chairman, were, generally speaking, wrapped into the housing bill we passed before which never actually got anywhere. I am hoping very much that the committee may look with favor upon them at this time.

Mr. Chairman, the 18-month moratorium on new commitments for housing assistance, very, very sharply, by 93 percent, reduced the level of new commitments which we have to look forward to. This will not show immediately because we have a backlog for 1974, but it will show very quickly thereafter unless this committee, backed by the Senate, changes the trend. And that, I think, is the problem which we have.

I might say, gentlemen, parenthetically that I am very deeply concerned about the maintenance of the pace of the American economy. This is, after all, the real thing. Any solution to the problems of inflation and international money rates must be built upon productivity. And housing is probably the most basic kind of production. Therefore, you have in your hands, not only the matter of housing as a social, humanitarian activity, but also the matter of housing as a key ingredient in the American economy which can suffer very adversely if housing starts drastically fall off.

I do not think it is beyond the realm of possibility at all that we will go from high economic activity to a recession and perhaps worse. And I hope you gentlemen will consider the housing situation and will evaluate it as you are also concerned with money and many other aspects of the economy at home and abroad and its impact upon the total operation of the country.

So first is your solicitude about the available level of housing activity. I believe that it is very largely based upon the availability of financing. I see no shortages of labor or material and, therefore, all the more important is the legislation you are considering.

Now, it is my conviction that while we have seen some scandals, et cetera, it still remains essential if you are going to maintain a construction level effectively to continue the sections 235 and 236 subsidy programs. I believe that the housing allowance program is an excellent experiment and should be continued, but I do not see it as replacing these subsidy programs. Especially in areas where low vacancy rates prevail like New York City.

In 1971, subsidized housing starts were one-fifth of the total; the actual starts subsidized were 443,000. In 1966, only 5 years earlier, it was 6 percent of the total or 71,000. It seems to me that this is a very clear indication of the dependence of the housing economy upon some form of sections 235 and 236 subsidization.

Now, I would like to focus the attention——

The CHAIRMAN. Let me ask you again, you cited 1971, was it?

Senator JAVITS. Right, 1971. It was one-fifth of the total housing starts.

The CHAIRMAN. One-fifth of the total number?

Senator JAVITS. Right; and only 5 years earlier it was only 6 percent. And I know as a matter of fact, Mr. Chairman, in talking with

housing entrepreneurs especially in New York City that it is simply impossible to consider anything within any reach of the ordinary family without the subsidy feature. They simply cannot go into it. So it is really critically important to continue some type of subsidy.

The CHAIRMAN. Do you approve of the present subsidy plan that we have for those programs?

Senator JAVITS. Yes; I think after struggling through with it, whatever may be its drawbacks and advantages, on the whole, it is viable. That is all I am really interested in, what will make the horse go and drink.

The CHAIRMAN. You were on this committee, I believe, when we started experimenting——

Senator JAVITS. I was, exactly.

The CHAIRMAN [continuing]. With interest subsidy.

Senator JAVITS. Exactly right.

The CHAIRMAN. The first program that went through with an interest subsidy, I believe, was the college housing program.

Senator JAVITS. Exactly.

The CHAIRMAN. Three percent. And we had a pretty hard time getting any agreement on 3 percent. Finally, we did get it down to 1 percent.

Senator JAVITS. The chair may remember that we had a debate on the floor which seemed to be absolutely facing a blind wall until we came up with the idea of an interest subsidy and then the opposition melted. That was the \$800 million, the start of that whole operation.

The CHAIRMAN. It took a good bit of argument and time, but we finally got it.

Senator JAVITS. You and your colleagues, Mr. Chairman.

The CHAIRMAN. By the way, since I have broken in a while ago, you referred to the Wagner-Ellender-Taft bill——

Senator JAVITS. Right.

The CHAIRMAN [continuing]. Did you ever hear of Senator Ellender saying that on that bill, he was always in the middle? When the Republicans were in control, it was a Taft-Ellender-Wagner bill. When the Democrats were in control, it was Wagner-Ellender-Taft bill, which left him always in the middle.

Senator JAVITS. An interesting little anecdote of history is that we needed those Republican votes; they were very hard to get. I was a fairly new Congressman and a very conservative lady, but with a very big heart named Frances Bolton, of Ohio, went along, and the logjam was over. It is an interesting story.

The CHAIRMAN. I knew Mrs. Bolton quite well and her husband also served in the House. They both served in the House.

Senator JAVITS. Mr. Chairman, I wish to call the attention of the committee to two bills which I hope that they will consider. One bill is S. 2276, the Neighborhood Conservation Act. The bill is critically important to the older urban centers which are after all the largest, the idea being neighborhood conservation. And the concept, involves refinancing and a shallow subsidy to 3 percent. This would cover owner-occupied housing of two to seven units, a cooperative or a condominium covering more than seven units and larger units. The key feature is the nature of the neighborhood which generally rests upon another neighborhood that is going very bad and which can be con-

tained and reclaimed, provided that the neighborhoods which are still pretty good and lean on it are not themselves corrupted.

We have very outstanding examples of that in New York which will lend themselves on a very economic basis to rehabilitation. And the heavy emphasis, of course, must be on renovation in those particular areas. And the bill to which I refer rests heavily upon rehabilitation and refinancing.

There are some very significant figures about New York which I would like to call to the committee's attention because they are not unsymptomatic of other cities. New York has a vacancy rate of less than 1 percent which gives you no competition at all. That is, you cannot depend on the competitive factor in selection of housing. And it has very grave problems because abandonment is enormous. Some 18,000 to 30,000 units a year. So much so that the production level falls short of abandonments, let alone any new needs or other reasonable obsolescence.

Then, we have grave shortages in relocation facilities, forcing new slums when families have to be temporarily evacuated to permit construction.

And then we have very serious deferred maintenance problems with devastation going on in whole neighborhoods and the real problem in refinancing in vast sections of the city because rent control, often not administered with the wisdom that it should be, makes it not viable to refinance at the present high interest rates. This in turn brings about abandonments.

Then, the conventional financing is very difficult to obtain, especially in the improvement and rehabilitation field. And that is why I urge upon the committee this neighborhood conversion bill or such elements of it as the committee may feel will fit into the total situation.

And, of course, the traditional rising interest costs and the construction costs which get rents which are the mainstay of that type of housing way out of line.

So, Mr. Chairman, I hope the committee will have a good look at S. 2276, the Neighborhood Conservation Act. Its authorizations are \$100 million in 1974; \$150 million in 1975; \$200 million in 1976. And it has a built-in system of mortgage interest reduction payments calling for \$50, \$100 and \$150 million respectfully for 3 fiscal years. It calls for a coordinated attack on the preservation of, as I see it, the transitional areas in large cities which will be slums themselves unless we at the Federal level help to save them.

The other bill I would like to call to the committee's attention is S. 2103 which is a bill to establish a nongovernmental, nonprofit corporation to develop and publish standards affecting building materials and building codes, methods of construction, techniques and material. This would be called the National Institute of Building Science and we really need most urgently, Mr. Chairman, some national establishment of that kind.

We have done it in many diverse fields. We do it in health where we have had major programs which take infinitely more money than is here involved. We do it in safety, industrial safety. Senator Williams is the chairman and I am the ranking member of the committee which has handled that, and I think on the whole, considering the size of the problem, with marked success.

We do it in education. We have just set up a national institute for experimentation and education. And I would strongly commend that it should be done here as a critically important forward step by the committee.

I might say to the committee that the bill really has had the support of practically the whole industry. It passed last year as part of the omnibus housing bill, S. 3248, which, of course, as I mentioned when I opened, did not go through the House. It was also included in the housing bill reported by the House Banking Committee.

So I really think that this is an idea whose time has come, Mr. Chairman, and I hope very much that in whatever the committee does, this particular measure may be included.

Just a few other things, Mr. Chairman, that I hope the committee will look at. I know the committee does not have jurisdiction over what are called indirect subsidies. That is the tax law deductions representing depreciation, interest, and taxes. But I would urge on the committee because it comes within the context of the housing picture, to make its recommendations to the Senate and to the Finance Committee on that score.

I think we would be enormously helped when it comes to floor amendments or amendments considered by the Finance Committee if this committee which knows the most about housing has made its recommendations on those indirect subsidies. I urge the committee, Mr. Chairman, not to consider that subject sacrosanct, but to deal with it in a reporting and recommending way as guidance for the Senate.

I might point out to the committee as a prototype of that approach we in the Labor and Public Welfare Committee in considering what is one of the most important bills in the Congress—that is the pension and welfare fund reform bill—felt that we simply had to deal with aspects of the matter which were not in our jurisdiction. We did not try to make law on the subject, but we certainly were very influential. Senator Williams and I testified before Finance, in giving them our views as to what was a necessary part of the package, thought it did not come within our jurisdiction.

And another point which I hope very much, Mr. Chairman, the committee will give its attention to is what can be done in the private financing field for low and moderate income families. I have tried to stir things up in New York with the major financial institutions, and our success has only been fair.

But I think the study of that would be very important. The suggestion I have is the possibility of a Housing Trust Fund modeled after the Highway Trust Fund. Incidentally, that is a proposal offered by the construction trades.

The other is a domestic housing bank which could provide a flow of resources for long-term financing of housing.

By the way, as to the latter, the State of New York had remarkable success with pooling mortgages on moderate income housing with full faith and credit, but without a State guarantee. The State got together about \$1 billion for financing that type of construction.

I realize the pressures which are on the committee. I am under the same pressures. And I make the suggestion, Mr. Chairman, perhaps a small subcommittee of the Banking Committee, working with a task force, drawing from construction, labor and the universities might

come up with some ideas for the committee to work on. That is a more long-range project, but I hope the committee will give it some attention.

Thank you very much.

The CHAIRMAN. Thank you.

Let me say I agree with your suggestion that even though we do not have jurisdiction over tax legislation, if we believe—and I do believe it—that a great deal of assistance could be given to housing programs by thorough consideration of the tax situation, it would be a good thing.

And, of course, you endorse 235, 236.

Senator JAVITS. Section 236 especially.

The CHAIRMAN. 202. I think you mentioned that, too.

Senator WILLIAMS. No, direct loan to nonprofits for the elderly.

Senator JAVITS. Yes, that is also very much in accord with the feeling of the day and I certainly support it.

The CHAIRMAN. I was reading Senator Williams' statement.

Senator JAVITS. Well, I am with him.

The CHAIRMAN. But I really opened it up just to say that yesterday, we worked out a conference agreement which includes the Senate language mandating, if that is the proper word, the President to bring the moratorium to an end and to reinstate these programs.

Senator JAVITS. That is excellent.

The CHAIRMAN. Now, a lot of doubt was expressed in the course of the conference whether or not the President would veto the bill. Some of the conferees were positive he would. Maybe you could persuade him not to.

Senator JAVITS. I will do my best.

The CHAIRMAN. Senator Williams?

Senator WILLIAMS. It is an excellent statement, Senator Javits. We certainly could use him back on this committee here, Mr. Chairman.

Now, we cannot lose him on labor so we are in a dilemma.

The CHAIRMAN. He is always active on the floor, and we appreciate it, Senator.

Thank you.

Senator WILLIAMS. Mr. Chairman, could I say this might be an appropriate time for me to include my statement in the record?

The CHAIRMAN. I was about to call on you.

Senator JAVITS. Mr. Chairman, may my entire statement go in the record?

The CHAIRMAN. Well, the entire statement will go in the record and Senator Williams' statement.

[The full statements of Senators Javits and Williams and material relevant to S. 2103 follow:]

STATEMENT OF JACOB K. JAVITS, U.S. SENATOR FROM THE STATE OF NEW YORK

A recent story in the newspaper speculated that interest rates for home-buyers could soon go to 9% thus effectively making it impossible for many people to purchase a new home. This situation dramatically illustrates a serious problem which has been aggravated by the Administration's moratorium on subsidized housing program.

As a result of the 18-month moratorium on new commitments for our housing assistance programs the level of new commitments will drop from 426,924 units in Fiscal Year 1972 to 29,800 units in Fiscal Year 1974—a reduction of 93% in activity. Because of existing commitments there will be a continuing level of new

construction starts of 232,400 units in Fiscal Year 1974 which is still well below previous levels.

The year 1973 could prove to be a crucial one in the life of our national housing policy. The Congress and the country will be faced with hard decisions regarding possible reform or complete abolition of existing housing programs. Many hard decisions will be required regarding subsidies, public housing, location of low and moderate-income housing, community veto of housing decisions and equal opportunity in housing.

At the beginning, I think it is necessary that those of us in government, both Federal and State, and those of us in private industry, reaffirm again our commitment to provide a decent home for all Americans. While we have paid lip-service to this commitment in recent years, our actions have had the effect of denying many of our citizens the decent home they deserve.

In the 92nd Congress omnibus housing legislation was stalled in the House of Representatives. During the last Congress the House Banking Committee, the Anti-trust and Monopoly Subcommittee of the Senate Judiciary Committee and the Joint Economic Committee each looked into existing housing subsidy programs and found them to be inadequate. The committees highlighted the problems of speculators realizing high profits while providing substandard housing, with the banks inadequately policing their mortgages and generally with the inability of the programs to provide proper housing. On the other hand, a study by Dr. Anthony Downs of the Real Estate Research Corporation sponsored by the homebuilders and the savings banks recently concluded that existing Section 235 and Section 236 subsidy programs were still needed even though improvements should be made in each program.

Looking at the problem in terms of housing conditions in New York City we can see that unless imaginative and bold steps are taken to forge a new partnership of public and private interests backed by a massive infusion of funds and a more enlightened public attitude, we are on the verge of being overwhelmed by our housing crisis. In New York I see the following problems: (1) vacancy rate of less than 1%; (2) abandonment of between 18,000 to 30,000 units per year; (3) a production level which falls short of annual housing stock losses; (4) an inadequate supply of relocation resources; forcing families into substandard and poorly maintained tenements; (5) widespread deferred maintenance by property owners leading to the devastation of entire neighborhoods and causing rapid disintegration of stable communities; (6) the inability of many property owners to obtain refinancing of any kind in vast sections of the City and in some cases, only at exorbitant interest rates unsupportable by revenues; (7) the inability of conventional financing to support improvements, rehabilitation or maintenance of multi-family dwellings in many sections of the City; (8) rising interest costs and construction costs which produce, when unsubsidized, rents of \$75-\$85 per room; and (9) poor management/maintenance services because of inadequate rent rolls, incompetent or indifferent property ownership and tenant abuse.

While serious problems have been brought to light in the existing housing subsidy programs these programs cannot be abolished. If New York's problems and the similar housing problems of other urban areas are to be solved, the existing subsidy programs are essential elements. The housing allowance concept has been offered as a possible substitute for subsidies, but a look at New York City's vacancy rate of 1% shows that a housing allowance used exclusively would not solve the problem and would drive up even higher the price of housing in the area. For the last several years I have advocated increased use of the housing allowances on a nationwide scale and I continue to believe that it should remain as *one* but only one of the means we use in housing.

Therefore, it is essential that the subsidy programs be continued and improved if we are to supply needed housing in New York and other urban areas. In 1971 subsidized housing starts totaled 443,480 or $\frac{1}{5}$ of the conventionally constructed housing starts for that year. This is compared to 71,632 starts in 1966 or 6% of the total conventionally constructed housing starts for that year. Thus considerable progress has been made in terms of the volume of housing produced in the country. Obviously improvements must be made in the 235 and 236 programs and the Congress should demand that HUD exercise greater supervision to avoid past problems and abuses. This will involve careful screening of participants in the programs, stronger construction warranties, tightening of appraisal procedures, greater review of projects costs and site locations and more emphasis on management capabilities over the long-term. These subsidy programs can be

made to work more effectively and continue as one of the major parts of a national housing strategy.

One of the major drawbacks I have found in the existing housing programs is their focus on the production of new housing while neglecting our existing housing stock. In New York City housing in transitional neighborhoods has been deteriorating at an alarming rate. To try to stem this tide I sought in 1972 to encourage the development of a national policy and strategy which would focus talent and resources on the preservation and upgrading of existing housing stock in older cities around the country. My proposal, which was included in part in the omnibus housing bill that did not become law last Congress, sought to provide a comprehensive neighborhood preservation approach to upgrade transitional neighborhoods and involve private investment through the use of FHA insurance and related shallow subsidies for refinancing and repair of existing housing stock. I have reintroduced this legislation this year as S. 2276, the Neighborhood Conservation Act; it provides:

First, for areas to be designated as "neighborhood conservation areas" by local governmental entities, which areas would then be eligible for grants by HUD to be used for repairs of streets, sidewalks, playgrounds and schoolyards; improvements of private property to eliminate dangers to health and safety and other similar neighborhood-oriented activities and improvements calculated to aid in achieving the objectives of the legislation.

In order to receive grants, localities would have to submit a five-year plan and demonstrate at the end of each year that significant progress was being made. It is hoped that this program along with other parts of the bill will help localities make a coordinated attack on the abandonment and decay of existing housing.

Second, for a new mortgage insurance program covering residential property located in neighborhood conservation areas. All properties covered would be multi family rental properties, cooperative or condominium properties which are basically sound or capable of being placed in standard conditions without substantial rehabilitation.

In the case of the mortgagor who is an owner-occupier of a building containing two to seven units, or of a cooperative or condominium covering more than seven units, the mortgage could cover 97 percent of the value of the property. The mortgage could be upped to 100 percent of value for non-profits and 90 percent of value for limited dividend projects. However, only owners who lived on property of less than seven units. This will serve to eliminate many of the abuses we have seen in existing insurance programs covering small dwelling units.

The mortgage program will allow for refinancing or sale of property provided that repair and improvements are made to such property. HUD will have to take such steps as it deems necessary to ensure that repairs and improvements have been or will be made.

Third, rentals on properties which receive mortgage insurance shall not be increased for a period of at least one year from the date of final endorsement of the insurance or thereafter unless the increase can be justified on the basis of increased operating expenses. For the purpose of maintaining or reducing rentals the Secretary of HUD is authorized to make interest reduction payments on behalf of the owners of the properties—but for the benefit of the tenants—which will reduce interest rates down to a minimum of 4 percent per annum. This "shallow subsidy" should enable rents to remain steady or perhaps decrease depending on the individual owner's mortgage terms.

Four, the Secretary of HUD is authorized to take such steps as accelerated processing of applications under the program; implementing the Government National Mortgage Association's authority to purchase mortgages under this legislation; and to coordinate with other government departments to ensure that manpower training funds and funds for small businesses and minority businesses are made available to neighborhood conservation areas.

Authorizations for neighborhood conservation area grants are \$100 million for Fiscal Year 1974, \$150 million for Fiscal Year 1975 and \$200 million for Fiscal Year 1976; and for mortgage interest reduction payments \$50 million for Fiscal Year 1974, \$100 million for Fiscal Year 1975 and \$150 million for Fiscal Year 1976.

I believe that this legislation will provide the coordinated attack that is necessary to preserve many of the "transitional areas" in New York and other states of the nation.

In another area, the absence of an authoritative national source to advise the housing industry and local authorities as to the latest technological devel-

opments in building materials and construction techniques and to propose nationally acceptable standards for local building codes has proven to be a great obstacle to efforts to meet the national housing goals set forth in the Housing and Urban Development Act of 1968. Moreover, the lack of a system of uniform building code standards increases the cost of construction and inhibits innovation in building techniques. The resulting fragmentation in the housing industry is clearly not in the public interest.

My bill, S. 2103, seeks to meet the problems in the housing area by establishing a nongovernmental nonprofit corporation which would develop and publish standards affecting building materials and local building codes; would promote and coordinate tests and studies of new building products and construction techniques; would provide research and technical services with respect to such materials and techniques; and, would assemble and coordinate, to the extent practicable, all present activities in this area.

The bill carries authorization for appropriations for 5 years starting at \$10 million a year, and scaling down to \$4 million a year at the end of the 5-year period. After that time the Institute is expected to be self-supporting.

I believe that this bill meets a very important need and should have the support of all those who are involved in the housing and construction industry. I would hope that this legislation will receive prompt and favorable consideration in the Senate. I would like to point out that this measure passed the Senate last year as part of S. 3248, the omnibus housing bill, which did not pass the House. However, this measure was also included in the housing bill reported by the House Banking Committee and is basically the same bill which passed the Senate but the authorization has been doubled. I hope the Committee will act favorably on the proposal.

In addition to improving existing subsidy programs, the Congress should take a close look at the "indirect subsidies" in the housing area resulting from provisions in the tax laws which allow for deductions such as depreciation and interest related to housing. I believe that any overall housing strategy must look at the total picture and these "indirect subsidies" play an important role in housing production. As a result of an amendment I introduced concerning the production of a tax expenditure budget the tax writing committees and the Joint Economic Committee will receive a detailed report of tax expenditures early next year. This should be studied closely by all interested housing specialists with a view to deciding whether we need more or less of these types of housing subsidies.

Another important area which needs to be closely looked at concerns the private financing of housing for low and moderate-income families. Over the last several years I have made efforts to involve the New York City financial community in this problem. While I've had some success, the involvement of the banks and life insurance companies has not been as extensive as it needs to be if we are to provide adequate housing. In my opinion, the predicament with respect to the basic issue of financing can only be faced in one of three ways: (1) the Nation's financial institutions need to devote a proper portion of their assets to financing at reasonable cost of housing for low and moderate-income families; (2) they must be assured of the necessary incentive or insurance and government cooperation to protect against excessive loss; or (3) the Government must take drastic measures to provide financing of our housing needs through alternative means. With respect to the latter, I would urge consideration of the following financing devices: (2) a housing trust fund approach modeled after the highway construction fund (a proposal offered by the construction trades); or (b) a Domestic Housing Bank which, through the sale of treasury bonds backed by the full faith and credit of the U.S. Treasury, would provide a steady flow of resources for the long-term financing of housing.

While concentrating on housing problems we must not lose sight of the fact that housing is directly related to such problems as income maintenance, creation of jobs, delivery of municipal services and social services and humane administration. Only in the context of solutions to these problems will we find solutions to the housing problem. However, much can be done in the area of providing decent housing for our people and I believe it is imperative that those of us who are involved in this area redouble our efforts to insure that legislation is passed with full information and that programs are carefully administered to bring maximum benefits to those who desperately need adequate housing.

STATEMENT OF HARRISON A. WILLIAMS, JR., U.S. SENATOR FROM THE
STATE OF NEW JERSEY

This morning the Subcommittee on Housing and Urban Affairs continues its hearings on pending housing and community development legislation. Today we will hear testimony specifically related to four bills I have introduced to improve the housing status of our Nation's older citizens.

To many people in this room, the need for better housing for the elderly is a well-known and a well-documented fact. What is more important, the Housing moratorium imposed by the Nixon Administration has made that need even more critical. I have spoken out against this ill-advised policy in the past, and I would like to register my opposition once again.

The future course of housing for the elderly could not be more uncertain than it is today. This uncertainty comes as a terrible blow to many elderly people who have patiently been waiting for special housing projects to receive approval. At the very least, I am hopeful that the four bills I have introduced this month will begin to focus on a viable housing program for older persons and begin to clear away the cloud of uncertainty that confronts today's poorly housed elderly people.

For a long time now I have been an enthusiastic supporter of the Section 202 Housing Program for the Elderly that had its beginnings over ten years ago. I still firmly believe in the quality and value of that program. I have put my complete confidence in the concepts of the 202 program, and I have seen firsthand its success.

For these reasons, I introduced last year an amendment to increase the authorization level for 202 and thus revitalize the program and return it to its full and useful purpose. Similarly, this year, I have introduced a bill, S. 2185, which repeats my amendment of last year by adding \$100 million to the authorization level for this program.

One of the most attractive long-term aspects of the 202 program was the "revolving fund" concept, wherein the sponsors would pay back their direct loans into a central fund at 3 percent interest, and these repayments could then be used again for additional loans. I have always hoped that this revolving fund would grow big enough to finance, on its own, a ready supply of housing for the elderly. Unfortunately, 202 was never that fortunate. As most of you know, it remains unused in the back rooms of HUD.

Although I would still like to see the day when we had a large revolving fund, I am well aware that this would require a hefty appropriation in the early years—so hefty, in fact, that I must have doubts about its chances.

The Budget Bureau has a firm policy with regard to all direct loan programs administered by Federal entities. Simply stated, that policy is as follows: all direct loans will be reflected in the annual Federal budget on a net lending basis. In other words, the budget will reflect the difference between funds loaned out and payments received.

An amply funded direct loan program like 202 requires a large initial source of funds, and since the early years of such a program generate only a small amount of repayment, the annual budget would be increased by very substantial margins. The result of such a policy is strong reluctance to fund or even use such a direct loan program—as we witnessed in the decline of 202.

In recent months, some fresh new thinking about this fiscal policy has come to light. In particular, my colleague, Senator Proxmire, and the Joint Economic Committee have spoken out against the current policy of including direct loan programs within the budget.

The argument is made that direct loans for housing should not be seen as a line item within the yearly budget, thus giving them the status of expenditure. They are really not expenditures but investments. They are investments backed by mortgages based on land and dwelling units, and the loans are paid back to the government with interest.

With this alternative approach to budgetary policy in mind, I have introduced legislation advocating two direct loan programs.

First, as I stated earlier, I introduced S. 2185 which would extend and revive the Section 202 program. I am still convinced that 202 deserves a new, longer, and more heavily funded life.

Second, in light of some realistic analysis of the budgetary impact of a fully funded 202, and in light of the recent arguments for seeing direct loans for housing as investments and not expenditures with regard to the annual budget, I have introduced S. 2179. This is fundamentally a modified Section 202 program. I have

offered it as a demonstration program to test the validity of the new modification, and I have limited its beginning to housing for the elderly and handicapped, where there is already an excellent track record with respect to direct loan programs.

The essential differences between this demonstration program and 202 are the interest rates and the budgetary impact. My new program would offer direct loans repayable under terms similar to the current Section 236 program (in other words at 1 percent interest) whereas Section 202 loans were repaid at 3 percent. Secondly, unlike 202, receipts and disbursements under this demonstration program would not be reflected in the Federal budget. Funding for the program would come from notes issued by the Treasury Department which would then be turned over to the Secretary of Housing and Urban Development who would make the direct loans to sponsors. Annual appropriations would be necessary to make up the difference between the 1 percent interest rate paid by the sponsor and the interest rate paid by the Government.

I sincerely feel that this new approach deserves careful consideration by the Congress. If it is enacted and proves successful, it should be expanded in scope. Potentially, this program could save the American taxpayer billions of dollars in the production of badly needed housing for low- and moderate-income people.

This massive savings of the public tax dollar was spelled out in detail by reports made to Congress by the Government Accounting Office (GAO) early this year. According to GAO, a savings over the next five years of \$2.2 billion would occur if current subsidized housing programs were financed by direct Government loans instead of the present interest-subsidy approach. This savings is made possible by the simple fact that the Government can borrow money at lower rates than sponsors can obtain on the private market. This \$2.2 billion savings is estimated using a 6.5 percent rate for long-term borrowing. If, instead, the savings is based on the average rate on all outstanding treasury obligations, the estimated savings would be between \$4 and \$5 billion over the same period.

Finally, there are two other bills before us for consideration.

S. 2180 is entitled the Housing Security Act of 1973. In short, it would establish an Office of Security in the Department of Housing and Urban Affairs and authorize the appropriation of special funding earmarked for developing and running security programs in housing projects assisted by HUD. My Subcommittee on Housing for the Elderly has carefully studied the issue of crime and lack of security in housing with respect to its effect on the elderly person who is so vulnerable to criminal attack. In our investigation, we have seen several examples of programs that have been successful in improving the overall security in the housing project. The greatest need has been for resources to pay for positive answers. My bill is directed straight to the heart of that need.

The fourth bill before us relating to the elderly is S. 2181, the Intermediate Housing for the Elderly and Handicapped Act. Intermediate housing is a very important concept for it is providing one answer to a very important need—the need for alternatives to institutional care. This bill is based on a successful model now going strong at the Philadelphia Geriatric Center. This Center has bought single family detached houses and converted them into 3 unit efficiency apartments. Because these houses are directly across the street from the Philadelphia Geriatric Center, their tenants have the security in knowing that they have ready access to all the supportive services and activities available at the Center. The combination of utilizing existing housing stock in close proximity to a multi-service Senior Citizen Center deserves, in my opinion, the greatest support.

I understand that one of our witnesses this morning will testify about a similar program and its effectiveness in New York.

In conclusion, let me say that I welcome you to this hearing this morning. I look forward to your testimony, and I solicit your continuous support and energy as we try to fashion a housing program deserving of the United States in service to its older citizens.

ALABAMA SOCIETY OF PROFESSIONAL ENGINEERS,

Birmingham, Ala., August 3, 1973.

HON. JOHN SPARKMAN,

Chairman, Subcommittee on Housing and Urban Affairs, Dirksen Senate Office Building, Washington, D.C.

MY GOOD FRIEND: S. 2103 before your Committee would set up the Institute of Building Sciences. The Alabama Society of Professional Engineers urges enactment of the measure because it is a much needed step toward improving and re-

fining all phases of our modern building requirements. Professional engineers also see it as a movement that would give them better guidelines in their services for the benefit of all of the country.

Respectfully and cordially,

MILLARD R. McGRUDER,
Executive Secretary.

AMERICAN INSTITUTE OF STEEL CONSTRUCTION, INC.,
New York, N.Y., August 8, 1973.

HON. JOHN SPARKMAN,
*Subcommittee on Housing and Urban Affairs, Committee on Banking, Housing
and Urban Affairs, U.S. Senate, New Senate Office Building, Washington,
D.C.*

DEAR MR. CHAIRMAN: I am writing to you to express the American Institute of Steel Construction's support for S. 2103 which would create a non-governmental instrument, the National Institute of Building Sciences, to act as a central coordinating agency on matters related to building criteria, codes and standards, and furnish leadership in evaluating new and modern building technology and the updating of the reference documents in building codes. We hope that your subcommittee on Housing and Urban Affairs and your committee on Banking, Housing and Urban Affairs will act in favor of this proposed legislation.

The American Institute of Steel Construction, in supporting this legislation, is consistent with the position it expressed to your committee in September, 1971 in favor of the creation of a National Institute of Building Sciences.

The American Institute of Steel Construction, in continuing our support of the concept of a National Institute of Building Sciences, recognizes that we are joined by virtually all segments of the construction industry and request that this letter be made part of the hearings record.

Sincerely,

JOHN K. EDMONDS,
Executive Vice President.

2009

American Iron and Steel Institute

150 East Forty-Second Street

New York, N.Y. 10017

1000 16th Street, N.W.

Washington, D.C. 20036

JOHN P. ROCHE
PRESIDENT

August 1, 1973

Hon. John J. Sparkman
Chairman, Committee on Banking,
Housing and Urban Affairs
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

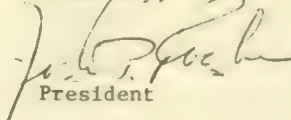
I am writing to you to express the American Iron and Steel Institute's support for S. 2103, legislation which would authorize establishment of a National Institute of Building Sciences. We urge that your Subcommittee on Housing and Urban Affairs, and your Committee on Banking, Housing and Urban Affairs take prompt and favorable action on this legislation.

The National Institute of Building Sciences will perform important, much needed functions. The Institute can, without creating any new standard-writing organizations, coordinate and encourage updating the many material, testing, design, and engineering practice standards used as reference documents in building codes throughout the United States. It will evaluate and prequalify existing and new building technology. It will assemble, store and disseminate technical data and related information. It will encourage all sectors to cooperate and to accept and use nationally recognized technical findings in codes and regulations.

In supporting this legislation, the American Iron and Steel Institute is maintaining the position it expressed two years ago when John D. Kirkwood of Republic Steel Corporation and Chairman of American Iron and Steel Institute's Subcommittee on Federal Construction Affairs of the Committee on Construction Codes and Standards, appeared before your Subcommittee. In continuing our support, we recognize and appreciate that we are joined by virtually all major trade and professional associations of the construction and building products industries.

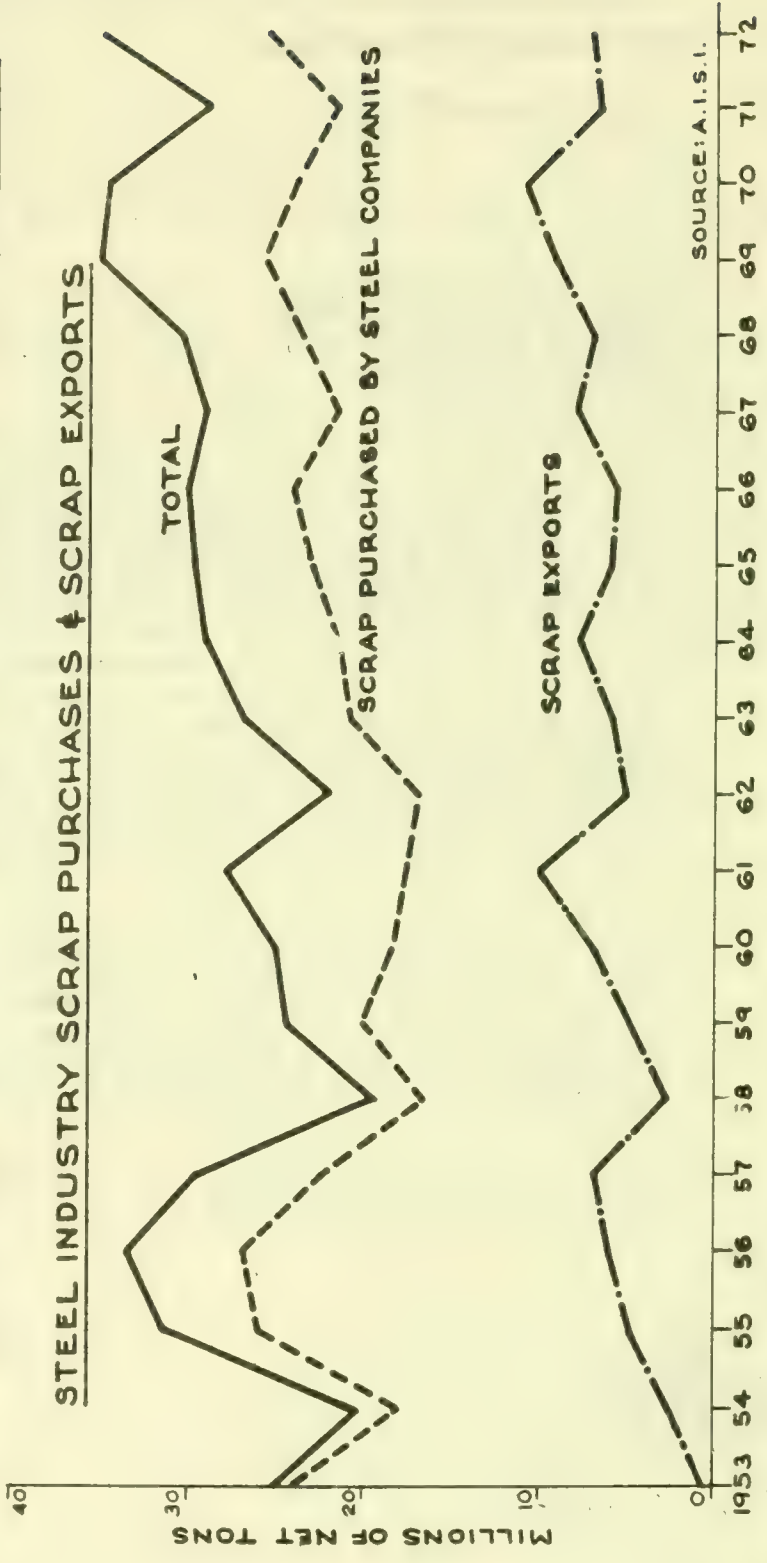
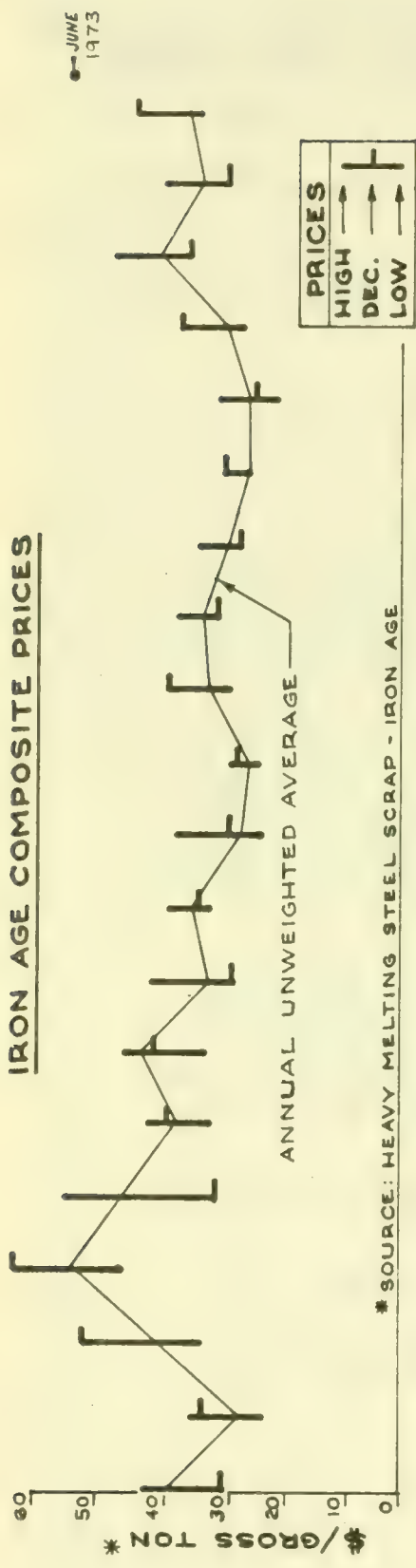
The American Iron and Steel Institute requests that S. 2103 be considered favorably by the Subcommittee, and we request that this letter be made part of the hearings record.

Sincerely,


President



PR:1b



July 18, 1973

FERROUS SCRAP EXPORTS - FOUNDRY AND STEEL PRODUCER RECEIPTS
QUARTERLY DATA
(THOUSANDS OF NET TONS)

	QUARTERLY EXPORTS	QUARTERLY RECEIPTS	QUARTERLY TOTALS		QUARTERLY EXPORTS	QUARTERLY RECEIPTS	QUARTERLY TOTALS
<u>1961</u>				<u>1968</u>			
1st	2,147	5,336	7,483	1st	1,367	9,401	10,768
2nd	3,184	6,788	9,972	2nd	1,423	9,301	10,724
3rd	2,540	6,267	8,807	3rd	1,867	6,863	8,730
4th	<u>1,845</u>	<u>6,913</u>	<u>8,758</u>	4th	<u>1,916</u>	<u>8,006</u>	<u>9,922</u>
Total	9,716	25,304	35,020	Total	6,573	33,571	40,144
<u>1962</u>				<u>1969</u>			
1st	1,180	7,217	8,397	1st	1,044	9,332	10,376
2nd	1,390	6,252	7,642	2nd	2,478	9,560	12,038
3rd	1,448	5,251	6,699	3rd	3,051	8,534	11,585
4th	<u>1,097</u>	<u>6,565</u>	<u>7,662</u>	4th	<u>2,603</u>	<u>9,274</u>	<u>11,877</u>
Total	5,115	25,285	30,400	Total	9,176	36,700	45,876
<u>1963</u>				<u>1970</u>			
1st	1,122	7,105	8,227	1st	2,112	8,948	11,060
2nd	1,612	8,624	10,236	2nd	3,224	8,942	12,166
3rd	2,086	6,465	8,551	3rd	2,795	9,295	12,090
4th	<u>1,544</u>	<u>7,238</u>	<u>8,782</u>	4th	<u>2,233</u>	<u>7,890</u>	<u>10,123</u>
Total	6,364	29,432	35,796	Total	10,364	35,075	45,439
<u>1964</u>				<u>1971</u>			
1st	1,881	7,561	9,442	1st	1,573	8,853	10,426
2nd	2,157	8,075	10,232	2nd	1,747	9,333	11,080
3rd	2,104	7,609	9,713	3rd	1,785	6,951	8,736
4th	<u>1,738</u>	<u>8,364</u>	<u>10,102</u>	4th	<u>1,151</u>	<u>7,790</u>	<u>8,941</u>
Total	7,880	31,609	39,489	Total	6,256	32,927	39,183
<u>1965</u>				<u>1972</u>			
1st	1,395	8,818	10,213	1st	1,439	9,501	10,940
2nd	1,692	9,739	11,431	2nd	1,736	10,193	11,929
3rd	1,822	8,317	10,139	3rd	1,966	8,888	10,854
4th	<u>1,260</u>	<u>8,446</u>	<u>9,706</u>	4th	<u>2,243</u>	<u>10,026</u>	<u>12,269</u>
Total	6,169	35,320	41,489	Total	7,384	38,608	45,992
<u>1966</u>				<u>1973</u>			
1st	1,108	9,522	10,630	*1st	2,703	10,608	13,311
2nd	1,476	9,645	11,121	**2nd	3,791	10,630	14,421
3rd	1,653	8,598	10,251	**3rd	3,381	10,630	14,011
4th	<u>1,620</u>	<u>8,841</u>	<u>10,461</u>	**4th	<u>2,045</u>	<u>10,630</u>	<u>12,675</u>
Total	5,857	36,606	42,463	**Total	11,920	42,498	54,418
<u>1967</u>							
1st	1,811	8,073	9,884				
2nd	2,257	8,205	10,462				
3rd	2,152	7,567	9,719				
4th	<u>1,414</u>	<u>8,866</u>	<u>10,280</u>				
Total	7,634	32,711	40,345				

Sources- U.S. Department of Commerce Business Statistics, except as noted below

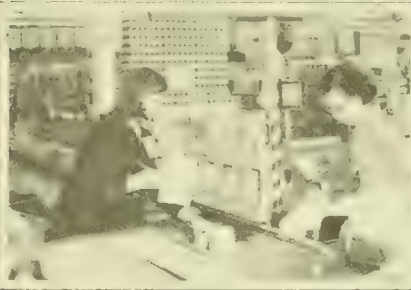
* Bureau of Mines

** Department of Commerce Estimate of July 1, 1973.



Statement of the

CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA



on: National Institute of Building
Sciences Act, Housing Act of
1973, & Better Communities
Act, S. 2103, S. 2182, S. 1743

to: Subcommittee on Housing and
Urban Affairs, Senate Committee
on Banking, Housing and Urban
Affairs

by: Harvey G. Hallenbeck, Jr.

date: August 3, 1973



As the nation's largest business federation, the Chamber's membership includes over 44,000 business firms, corporations and individuals—and more than 3,500 chambers of commerce and trade and professional associations, with an underlying membership in excess of 5,000,000.

STATEMENT
on
S. 2103, S. 2182, and S. 1743
NATIONAL INSTITUTE OF BUILDING SCIENCES ACT
HOUSING ACT OF 1973
and
BETTER COMMUNITIES ACT
for submission to the
SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS
of the
SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
for the
CHAMBER OF COMMERCE OF THE UNITED STATES
by
HARVEY G. HALLENBECK, JR.*
August 3, 1973

The National Chamber supports and urges prompt and favorable action on legislation to solve longstanding building codes and standards problems, to consolidate federal housing programs, and to set up a new system of equitable, broad-gauge federal aid to localities for community development purposes.

Specifically, we support the concepts of S. 2103, National Institute of Building Sciences Act, which would solve nationwide persistent building codes and standards problems through establishment of a nongovernmental National Institute of Building Sciences. This would be the single, recognized coordinating center for development of performance criteria and standards and for evaluation and prequalification of new building technology, and would (among other functions) encourage governmental and private sector acceptance and use of its findings in building codes and regulations.

The National Chamber supports, except for provisions relating to allocations of housing subsidies and to increased public agency development and ownership of housing, the concepts of S. 2182, Housing Act of 1973, which would consolidate and streamline federal housing programs having similar objectives, putting the federally insured and federally assisted programs into four easily identifiable and uniformly regulated categories.

We support, except for the Davis-Bacon provisions, the concepts of S. 1743, Better Communities Act, which would set up a new system of equitable, broad-gauge federal aid to localities for community development purposes.

*Construction Affairs Manager, Chamber of Commerce of the United States

S. 2103, NATIONAL INSTITUTE OF BUILDING SCIENCES ACT

S. 2103 will strike at the heart of what is commonly called the building code problem. For quite a number of years public attention has been directed to the lack of uniformity among building codes, to the failures to up-date them regularly, and to restrictions on the use of new products and practices. More recently, through the work of the National Commission on Urban Problems and other groups, the pertinent facts behind these problems have been identified:

- * There are 8,344 local governments that have building codes; all 50 States have numerous departments and agencies that deal with codes and standards; 35 or more federal agencies are concerned with building standards, provisions and regulations.
- * More than 150 associations and technical groups produce construction standards; over 80 different groups work on proprietary materials and equipment (to establish standards, inspect, certify, upgrade or issue seals of approval).
- * Thousands of manufacturers utilize standards in producing materials and components for building; more thousands of men in architectural and engineering fields use codes and standards in their professional design work; and far larger numbers are affected by codes and standards on a day-to-day basis in contracting and home building.
- * Technological and scientific progress is now so rapid that it has become impossible for any individual to keep abreast of all developments. Many manufacturers and designers, for example, lack the staff and other resources needed to find out if there are technical papers that bear on a certain subject area, or if there is research under way (or research results) by others. Building code administrators can find it virtually impossible to pull together all relevant facts in their efforts to reach sound decisions with respect to new products and methods.

These facts about building codes and standards problems indicate why difficulties are encountered in developing new products and practices and

bringing them into general use, and why the American people are not now enjoying the full benefits of the building industry's innovative potential.

These facts show that a nationally recognized coordinating system and center are needed for the development, promulgation, and maintenance of building standards, criteria and related technical matters. They show that this system and center are vital to prompt evaluation of modern, space-age building technology, and to widespread distribution of facts that will lead to utilization of new technology. They indicate the importance and urgency of establishing a single point of reference for assembly, storage, and dissemination of data related to codes and standards.

These facts about the building code problem show, too, that no ordinary coordinating instrument will suffice to accommodate the diverse public and private sector interests and activities. Experiences in the private sector, for example, show that standards producing organizations can be reluctant to put themselves under other organizations that they fear might be more responsive to other standards producing groups. This same reluctance could be anticipated in the public sector, where one department or agency could easily become unwilling to be coordinated by another agency which might be less than understanding of its special problems. The only answer, obviously, is a prestigious coordinating center that is neither exclusively public nor private, and in which all who are interested can participate on an equal footing.

These facts show, further, that progress in codes and standards must proceed on a firm basis of demonstrated excellence of technical work, and not by fiat. There must be opportunity for all legitimate interests to be heard. There must be orderly processes to entertain new ideas and evaluate new evidence. There must be voluntary acceptance based on the merits of the work.

S. 2103 embodies these important concepts. It establishes a non-governmental National Institute of Building Sciences -- with the advice and assistance of the National Academy of Sciences-National Academy of Engineering-National Research Council -- which will serve as the coordinating center for development and promulgation of performance criteria and standards, for review and acceptance of new methods and materials, and for assembly and dissemination of technical data on building. This National Institute of Building Sciences

will be an extraordinary nongovernmental instrument in which the many elements of both the private and public sectors that deal with codes, standards and related provisions can enter and participate on an equal basis. The National Institute of Building Sciences will carry out its functions through existing private and public organizations, agencies and institutions, and thereby avoid duplication of effort. It will provide the climate for development of standards and related provisions that are nationally recognized by reasons of technical excellence.

S. 2182, HOUSING ACT OF 1973

S. 2182, Housing Act of 1973, in its provisions consolidating federal housing programs, is aimed at putting important principles into practice, and the National Chamber supports and urges favorable action on these provisions. S. 2182 will eliminate inconsistent requirements now contained in programs that are related to one another. It will standardize elements common to a number of housing programs. It will provide flexibility in cost formulas and family housing expense schedules to permit federal programs to adjust to diverse local circumstances.

These concepts merit the support of people from all walks of life who are concerned with meeting housing needs. Greater private enterprise participation can take place when the number and complexity of federal programs is reduced. Business will find it easier and more economical to play a part in meeting shelter needs when federal red tape, paper work, confusion and delays are cut down.

Families of modest income who are in need of housing will benefit. They will receive more equitable treatment under standardized programs. They will have greater opportunities to achieve good housing when federal programs are given flexibility to adapt to local conditions. They will have a better understanding of the eligibility requirements for participating in assisted programs when these requirements are both made uniform and translated from government jargon into understandable every day terms.

Government will benefit from the streamlining of programs which will permit increased efficiency. The taxpayers will benefit from increased effectiveness in the use of subsidies as programs are more accurately directed toward meeting specific shelter needs.

This legislation is needed urgently. The consolidation, elimination of inconsistencies, standardization, and flexibility to meet local circumstances that are central to S. 2182 are long overdue. Over the past thirty-five years, federal programs in housing fields have proliferated. It is time that they mature into an orderly, logical, consistent system for dealing with housing needs. The single-shot and stop-and-go approaches of an earlier time are demonstrably inadequate for meeting today's problems.

The National Chamber recommends two kinds of amendments to S. 2182. First, we recommend deletion of provisions which would inject public agencies into the development and ownership of housing under those federally assisted programs that have been directed at private sponsors, both profit and non-profit. The record of recent years indicates that there is no dearth of private sponsors, and therefore there is no demonstrated need for action by public agencies. Further, if such a need emerged, a simple change making public agencies eligible sponsors under Section 502 would handle the problem. This would be far preferable to the approach now taken in S. 2182 which in effect sets up a new program -- an unnecessary complicating step in what is otherwise an Act to cut down on the number of federal programs and streamline their operations.

Second, the National Chamber recommends deletion of provisions relating to the geographic allocation of housing subsidies. These provisions would result in a process far more complicated than the present method of allocation through HUD offices. The S. 2182 approach would slow up housing production by introducing additional steps and clearance processes, which also might be expected to result in adverse effects on housing costs. Further, it would remove housing allocation decisions from the discipline of market facts such as needs, costs and inventories. Since these provisions of S. 2182 would slow down progress, add to costs and hinder the construction of the right housing at the right places and times, deletion is recommended.

S. 1743, BETTER COMMUNITIES ACT

S. 1743 would set up a new system of equitable, broad gauge federal aid for community development purposes as a replacement for seven old categorical assistance programs (urban renewal, model cities, neighborhood facilities, water

and sewer grants, open space, rehabilitation loans, public facility loans). Under this new "special revenue sharing" approach, federal funds would be allocated according to a formula that reflects need (factors in the formula are population, number of families below the poverty level, and housing overcrowding -- with the poverty factor weighted twice). Instead of the now-you-get-money-now-you-don't game of uncertainties that has been played under the old categorical programs, the new S. 1743 approach is one in which cities not only will know in advance how much money is allocated to them, but also will be able to be certain that they will actually get the money. There will be no requirements for local matching funds, and virtually no federal red tape. In addition to the automatic entitlement, each year, of funds to metropolitan cities and urban counties, money will also go to States and many smaller communities. Further, the Act guarantees that no city will receive less during the first year of operation under the formula than it has been receiving, on the average, during the past five years -- with any reductions being phased down slowly over future years. The funds distributed under this Act could be used for virtually any community development purpose -- including all activities now authorized under programs that are being replaced.

This is important legislation that is much needed. The old, stand-in-line, first-come-first-served categorical grant programs have not been doing the community development job. Under the old programs, some cities have been getting a lot of the federal money, while others having equal or greater needs have been getting little or nothing. Even when cities have been eligible for funds, they sometimes have had to wait for years while getting through the red tape of the federal review processes. Another difficulty with the old programs is that their requirements for local matching funds have frequently been burdensome, putting communities in a position where matching the federal funds has stretched city budgets drum tight and virtually forced city officials to take funds away from other city functions in order to support the federal programs. At that, federal categorical grant programs have covered only certain pieces of urban problems, and have failed to cover or assist with other related pieces -- producing a situation in which efforts to deal with city problems are far less than efficient. In addition, the old categorical programs have often been operated through special-purpose local agencies, thereby eroding the responsibility and responsiveness of local government.

The National Chamber, in supporting the major concepts of S. 1743, Better Communities Act, as a new and equitable community development assistance program that is free of the defects of the old categorical grant programs, recommends deletion of Section 10 of the Act, which would make Davis-Bacon Act provisions applicable to projects financed in whole or in part from the special revenue sharing funds. Davis-Bacon works to lessen competition and protects the powerful construction trades unions. It destroys job opportunities, especially for disadvantaged workers. It drives up construction costs, thereby placing an added and unnecessary burden on all American taxpayers. The Section 10, Davis-Bacon provisions, in short, are counter productive to this otherwise well-conceived Act.

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The National Chamber, in conclusion, firmly supports the concepts of S. 2103, National Institute of Building Sciences Act, and, with amendments previously indicated, the concepts of S. 2182, Housing Act of 1973 and S. 1743, Better Communities Act. We urge prompt effort to perfect and enact these bills.

STATEMENT OF THE AMERICAN PLYWOOD ASSOCIATION

The American Plywood Association represents manufacturers who annually produce over 14.5 billion square feet (80% of industry total) of structural plywood for use in construction and industry. The largest single market for structural plywood is residential construction which accounts for more than 52% of sales volume. General construction including commercial and industrial buildings accounts for an additional 14% of the volume.

With such a large stake in the affairs of the building industry, the Plywood Association has substantial interest in the legislation that proposes creation of a National Institute of Building Sciences.

This interest is further stimulated by our deep involvement in building research and building regulations. As part of the assignment from our membership, our Association is responsible for the broadening of plywood markets through the engineering and testing of new uses and the recognition of those new uses by building regulatory agencies. This makes us intimately familiar with the real world problems of building regulations and introduction of new technology.

We are convinced the basic concepts of S. 2103 are sound and that, if they are adopted by Congress with changes to strengthen certain of those concepts and to clarify that the Institute is not a device to establish a federal building code, the implementation will produce an effective means to coordinate the development and introduction of new building technology, performance criteria, and evaluative test methods on a national basis.

It is additionally important that performance criteria developed through the Institute be submitted to review under a process that will assure that a national consensus for the criteria exists. Equally important is that adoption of findings of the Institute be on a voluntary basis and not be made mandatory.

Changes proposed are outlined in the following paragraphs. Their intent is to (a) eliminate wording that suggests mandatory requirements or implies control, (b) insure that the Institute utilizes the full range of capabilities of existing organizations, and (c) point the Institute toward work on *technical building matters* as opposed to subjects such as zoning, occupancy, land use, and those involving environmental considerations. Areas of change are shown by lining out present wording where a deletion is proposed and by underscoring where new wording is proposed. Only those portions of the text where a change is involved are shown.

TITLE X—NATIONAL INSTITUTE OF BUILDING SCIENCES

Sec. 1001(a) (1) The Congress finds: (A) that the lack of *a recognized* national source to make findings; (B) that the establishment of model building codes or of a single national building code will not completely resolve the problem because of the difficulty at all levels of government in updating their housing and building regulations to reflect new developments in technology; (C); (D) that the existence of a single nationally recognized institution to provide

(2) The Congress further finds, however, that *while a recognized national* source of technical findings is needed

(3) The Congress declares that *a non-governmental*

(e) (1) The Institute shall exercise its functions and responsibilities in four general areas relating to building regulations as follows:

(A) Development, promulgation, and maintenance of nationally recognized performance criteria, standards, and other technical *building* provisions for maintenance of life, safety, health and public welfare including test methods and other evaluative techniques relating to building systems, subsystems, components, products, and materials.

(B) Evaluation and prequalification of existing and new building technology in accordance with paragraph (A).

(C) Conduct of needed investigations in direct support of paragraphs (A) and (B).

(D) Assembly, storage and dissemination of technical data and other information directly related to paragraphs (A), (B), and (C).

(2) The Institute in exercising its functions and responsibilities described in subsection (1) shall assign and delegate responsibility for conducting each of the needed activities in subsection (1) to one or more of . . .

(3) The Institute in exercising its functions and responsibilities under subsections (1) and (2) shall (A) give particular attention to the development of methods for encouraging all sectors of the economy to cooperate with the Institute and to accept and use its technical findings, and to accept and use the performance criteria, standards, and other technical provisions developed for use in Federal, *agency or department building regulations, and in State, and local building codes and related regulations* which result from the programs of the Institute; (B) seek to . . . and; (C) consult with . . .

S. 2103, as modified by the proposed changes, is a positive response to the essential needs of the public and the building industry. It will provide a means for the coordination and cooperation of all who are involved in the various facets of the building process in an atmosphere that is free of concern of domination by government or special interest groups. Such an atmosphere is essential for effective progress.

The American Plywood Association urges recognition and support of S. 2103 with the proposed changes as noted.

AMERICAN SOCIETY OF CIVIL ENGINEERS.

New York, N.Y., July 31, 1973.

Senator JOHN SPARKMAN,

Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, D.C.

DEAR SENATOR SPARKMAN: As you know, your committee is holding hearings on S. 2103, a bill which would establish a National Institute of Building Sci-

I would like to express the support of the American Society of Civil Engineers for a National Institute of Building Sciences.

One of the purposes of ASCE is to advance the science of construction engineering projects; to define construction terms and establish construction standards; to harmonize construction practices with design theories; and to encourage education and research in construction projects. I believe that a National Institute of Building Sciences will contribute to the achievement of these goals which unquestionably are in the national interest. In fact, I believe that all the design professions recognize the need for the establishment of a single national coordinating agency in the building sciences field and support the basic concept of a National Institute of Building Sciences to fulfill this need. As you may recall, my society, along with the American Institute of Architects, the American Society of Consulting Planners, the American Society of Landscape Architects, the Consulting Engineers Council of the United States and the National Society of Professional Engineers, so testified before your committee during the 92nd Congress.

It would be appreciated if this letter could be made a part of the record of your hearings.

Very truly yours,

JOHN E. RINNE.

President.

[Telegram]

Senator JOHN SPARKMAN,

Capitol Hill, D.C.

Building Officials and Code Administrations International supports S. 2103 legislation to establish a national institute of building sciences and urges favorable consideration by the subcommittee establishment of the institute will fill a void in construction technology research that can not be met by private industry. We request that our telegram be made part of the hearings record.

RICHARD L. SANDESON.

Executive Director.

CONSULTING ENGINEERS COUNCIL OF THE UNITED STATES,
Washington, D.C., August 1, 1973.

Hon. JOHN SPARKMAN,
*Chairman, Subcommittee on Housing and Urban Affairs, Committee on Banking,
Housing and Urban Affairs, U.S. Senate, Washington, D.C.*

DEAR SENATOR SPARKMAN: We take this opportunity to express the support of our organization for the enactment of S. 2103 and the establishment of a National Institute of Building Sciences.

A dire need exists in the construction industry for a non-federal organization to coordinate and serve as the focal point for all matters relating to building regulations and building technology. The construction industry is frequently assailed as being fragmented and unresponsive to technological change. Admittedly, the industry is fragmented, but necessarily so, in order to meet the demands of a diverse market as well as a splintered system of building regulations. A National Institute of Building Sciences would be a major step in eliminating the latter.

Based on discussions and our relationship with various other segments of the construction industry, we not only are unaware of any segment which is opposed to S. 2103, but rather we have witnessed universal support for the measure. We, and other elements of the construction industry, however, are becoming somewhat frustrated with the failure of the Congress to take the necessary action to make NIBS a reality. Consequently, we respectfully urge that your committee act favorably on this legislation.

We would appreciate having this letter made part of the hearing record and we look forward to your Committee's favorable consideration of S. 2103.

Very truly yours,

W. N. HOLWAY,
President.

DAVID S. MILLER & ASSOCIATES, INC.,
Cleveland, Ohio, August 3, 1973.

Hon. JOHN SPARKMAN,
*Chairman, Subcommittee on Housing and Urban Affairs, Committee on Banking,
Housing and Urban Affairs, U.S. Senate, Washington, D.C.*

DEAR SENATOR SPARKMAN: This letter is to urge your support of legislation to authorize the establishment of a National Institute of Building Sciences, as covered in Senate bill S. 2103.

Having been involved in various segments of the building industry for some 35 years, it seems to me that this particular legislation is most important to help assure that various sources of technological development in the building industry can be brought together in a sensible way. Your effort in encouraging the Subcommittee to favorably support this legislation would certainly be appreciated.

I would also like to request that this letter be made a part of the hearings record.

Your help in this matter would be most appreciated.

Sincerely yours,

DAVID S. MILLER & ASSOCIATES, INC.

FLATIRON COMPANIES,
Boulder, Colo., July 31, 1973.

Hon. JOHN SPARKMAN,
*Chairman, Subcommittee on Housing and Urban Affairs, Committee on Banking,
Housing and Urban Affairs, U.S. Senate, Washington, D.C.*

DEAR SENATOR SPARKMAN: Your favorable consideration of Senate bill 2103 which authorizes the establishment of a National Institute of Building Sciences is urged.

The increasing conflict, over-lapping and stifling effect of the many specification agencies in the building industry are grossly wasteful and inefficient reference the end result they create.

I believe that the creation of NIBS would be a positive factor in improving this situation.

Yours truly,

HAROLD H. SHORT,
Chairman of the Board.

Hon. JOHN SPARKMAN,
*Chairman Subcommittee on Housing and Urban Affairs, Committee on Banking
 Housing and Urban Affairs, U.S. Senate, Washington, D.C.*

The International Conference of Building Officials support in concept the legislation in S. 2103 which establishes a National Institute of Building Sciences. This support is based upon the following amendments.

1. Delete the sentence headed "B" on lines 17 through 24 on page 2. Delete the words "relating to building regulation" on lines 18 and 19 on page 9.

3. Delete the words "suitable for adoption by building regulating jurisdictions and agencies" on lines 23 and 24 on page 9.

4. Delete the words "to the maximum extent possible" on line 1 on page 10.

We support the concepts set forth in this legislation because of the need for basic research to be developed at the national level. It is requested that this letter be made a part of the hearing record.

C. C. HARVEY,
 G. HALLEBECK, JR.,
 EUGENE B. PESTER,
 RICHARD L. SANDERSON,
 WILLIAM G. VASVARY,
 JAMES E. BIHR,
 I. H. CARTER,
Executive Director.

NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION,
 Washington, D.C., August 2, 1973.

Hon. JOHN SPARKMAN,
*Chairman, Subcommittee on Housing and Urban Affairs, Dirksen Senate Office
 Building, Washington, D.C.*

DEAR SENATOR SPARKMAN: The National Electrical Contractors Association is the voice of the electrical construction industry. This industry is comprised of more than 28,000 electrical contractors, doing an annual volume of more than \$12 billion. The National Electrical Contractors Association has previously expressed its strong interest in the enactment of legislation establishing a National Institute of Building Sciences. We understand that your Committee once again is considering this measure, S. 2103, by Sen. Javits, as part of your overall hearings on housing matters.

The confusion of codes and proliferation of jurisdictions and regulatory requirements at the federal, state and local levels makes such an institute a real necessity. Establishing a National Institute of Building Sciences as a nongovernmental agency, with inputs available from all sectors, including individuals and public and private organizations, is a sound and progressive approach.

At this time, the National Electrical Contractors Association, once again, would like to express its strong support for S. 2103 and urge swift approval by your Committee. We would appreciate very much if our comments could be made part of the hearing record on this measure.

Thank you for allowing us this opportunity to present our views.

Sincerely yours,

ROBERT L. WHITE,
Manager, Public Relations.

NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS,
 Washington, D.C., July 31, 1973.

Hon. JOHN SPARKMAN,
*Chairman, Subcommittee on Housing and Urban Affairs, Committee on Banking,
 Housing and Urban Affairs, U.S. Senate, Washington, D.C.*

DEAR SENATOR SPARKMAN: The National Society of Professional Engineers, on behalf of its 68,000 members through 54 state-affiliated organizations and more than 500 local chapters, wishes to reaffirm its support for the enactment of S. 2103 to establish the National Institute of Building Sciences.

We believe that the creation of the proposed Institute will be a major step in achieving substantial improvements in building technology with consequent assistance in the development of improved techniques, procedures and products leading to a higher volume and quality of low-cost housing so urgently needed.

The engineering profession is eager to cooperate in this endeavor through par-

ticipation in all aspects of the Institute's programs, including the service of professional engineers on the Board of Directors as stipulated in Section 1001(c) (1) of S. 2103.

We hope that the Subcommittee on Housing and Urban Affairs will give prompt and favorable consideration to S. 2103.

Respectfully yours,

PAUL H. ROBBINS,
Executive Director.

THE SOCIETY OF THE PLASTIC INDUSTRY, INC.,
New York, N.Y., July 30, 1973.

HON. JOHN SPARKMAN,
*Chairman, Subcommittee on Housing and Urban Affairs, Committee on Banking,
Housing and Urban Affairs, U.S. Senate, Washington, D.C.*

DEAR SENATOR SPARKMAN: This is to record with you our support for S. 2103, legislation introduced by Senator Javits, to establish a National Institute of Building Sciences. We urge favorable consideration by the Subcommittee on Housing and Urban Affairs.

We believe the proposed NIBS legislation to be the most comprehensive and effective way to stimulate building code improvement and building technology itself in the United States. In our view, in fact, definitive, technical findings available to all sectors of the economy can only result from the establishment of the instrument NIBS proposes.

In our experience and fraternization in the construction community, we find that all segments of it support this legislation.

Please make this letter part of the hearings' record, and be assured of our continuing interest and cooperation.

Sincerely yours,

JOSEPH S. McDERMOTT,
Staff Director.

BLOUNT, INC.,
Montgomery, Ala., August 9, 1973.

HON. JOHN F. SPARKMAN,
*Chairman of the Senate Subcommittee on Housing and Urban Affairs, Committee
on Banking, Housing and Urban Affairs, U.S. Senate, Washington, D.C.*

DEAR SENATOR SPARKMAN: On August 1, I sent you a telegram urging your support for legislation as covered by S. 2103. A copy of that telegram is attached hereto. For several years we have been actively concerned about the problems in the codes, standards and building regulation areas of construction. We have been active in the American Iron and Steel Institute, the American National Standards Institute, the Building Research Advisory Board, the National Association of Manufacturers, and through the Construction Action Council, the Chamber of Commerce of the United States.

In each of these associations we have been in close contact with a broad spectrum of representatives interested in the health and well being of construction in this country. It is our opinion after several years of work in this area that this broad spectrum of contacts considers that the proposed legislation to establish a non-governmental National Institute of Building Sciences is the most constructive proposal that has yet been made. It would be a single coordinating center for the development of performance criteria for the evaluation of new building technologies and would, in our opinion, encourage greater cooperation both in the governmental and private sector for the use of its findings in building codes and regulations.

The proposed National Institute would carry out its functions through existing private and public organizations who have already established tremendous knowledge and information in this same area. It would thus avoid the duplication of effort and conflict between the present mechanisms and changes which should be made in the future. We will certainly appreciate anything you can do to forward this legislation.

Sincerely,

A. J. PADDOCK.

LOS ANGELES AREA CHAMBER OF COMMERCE,
Los Angeles, Calif., August 7, 1973.

Hon. JOHN SPARKMAN,
Chairman, Senate Subcommittee on Housing and Urban Affairs,
Washington, D.C.

DEAR MR. SPARKMAN: The Los Angeles Area Chamber of Commerce supports the creation of a National Institute of Building Sciences (S. 2103) which would bring order to the chaos of building codes.

S. 2103 would provide a more effective approach to the problem of developing and maintaining a rational relationship between building codes and related regulatory requirements and building technology; facilitate urgently needed cost saving innovations in the building industry, through the creation of an appropriate non-governmental body (a National Institute of Building Sciences); insure that its (NIBS) findings are made public; and provide an effective method for encouraging and facilitating Federal, State and local acceptance and use of such findings.

The Los Angeles Area Chamber of Commerce urges that the Subcommittee on Housing and Urban Affairs give this legislation favorable consideration and request that you submit our letter of support to be made part of the hearings record.

Sincerely,

FREDERICK LLEWELLYN,
President.

EGGER STEEL CO.,
Sioux Falls, S. Dak., August 10, 1973.

Hon. JOHN SPARKMAN,
Chairman, Subcommittee on Housing and Urban Affairs, Committee on Banking,
Housing and Urban Affairs U.S. Senate, Washington, D.C.

DEAR SENATOR SPARKMAN: I am contacting you regarding pending legislation which would authorize the establishment of a National Institute of Building Sciences, S. 2103.

There are presently over 8,000 local government building codes in all of the 50 states and having been in the construction industry in the midwest for over 40 years, I assure you that federal legislation is needed to settle the building code problem. I certainly hope that you and your committee will act favorably on the proposed legislation. I respectfully ask that this letter be made a part of the hearings record.

Yours very truly,

ALBERT E. EGGER,
President.

SOUTHERN BUILDING CODE CONGRESS,
Birmingham, Ala., August 8, 1973.

Hon. JOHN SPARKMAN,
Chairman, Subcommittee on Housing and Urban Affairs, Committee on Banking,
Housing and Urban Affairs U.S. Senate, Washington, D.C.

DEAR SIR: The Southern Building Code Congress supports and urges early favorable action on legislation S 2103, National Institute of Building Sciences.

Specifically, we support the establishment of a nongovernmental center for development of performance criteria and standards and for evaluation and pre-qualification of new building technology. We support the use of existing private and public organizations to carry out this function of the National Institute of Building Sciences as provided in S 2103.

Yours very truly,

WILLIAM G. VASVARY,
Executive Director.

NATIONAL CONFERENCE OF STATES
ON BUILDING CODES AND STANDARDS,
Washington, D.C., August 8, 1973.

Hon. JOHN SPARKMAN,
Chairman, Senate Subcommittee on Housing and Urban Affairs, New Senate
Office Building, Washington, D.C.

DEAR SENATOR SPARKMAN: Although the National Conference of States on Building Codes and Standards has not had a chance to review the above bill, we understand the legislative hearings are concluded and the deadline for letters and statements for the record is August 14, 1973. Since time is so short, I, as Chairman of the NCSBCS Legislative Committee, respectfully request this letter and the attached information based on similar bills (S-1859 and HR 8398 in the 1971 Congress) be inserted in the record.

You will note from the attached information that NCSBCS firmly supported the concepts of an acceptable overall coordinating organization, which would not be controlled by any single organization, agency or exclusive group, to work with state and local authorities and existing private and government organizations and agencies to enhance the effectiveness of the voluntary codes and standards systems of the U.S.

The Executive Committee did endorse the 1971 NIBS Bill (S-1859) which was similar to S-2103, but we recommended changes which would provide for the strengthening of communication with state and local authorities and the building community and would assure that the NIBS Board would be more responsive to state and local authorities as well as the building community as a whole.

You will find attached the following:

1. NCSBCS commentary on NCSBCS amendments to the 1971 NIBS Legislation and copy of S-2103 with the 1971 NCSBCS suggested amendments inserted. It should be noted that the NCSBCS recommendations to the 1971 NIBS (S-1859) are not incorporated in S-2103 and NCSBCS endorsed the 1971 NIBS (S-1859) with these recommendations.

2. Copy of letter dated December 31, 1971 to you from me when I was Chairman of NCSBCS endorsing S-1859 with attached amendments as referred to above and copy of letter dated October 7, 1971 to you from me expressing the concern of NCSBCS on the states' constitutional authority and responsibility to protect their citizens and how the NIBS Legislation without amendments may affect this constitutional responsibility and authority.

3. Copy of page 656 of the *House Committee Hearings on Housing and Urban Development Legislation, 1971* on the 1971 NIBS (HR 8398). This page contains excerpts from an analysis by the "Library of Congress Congressional Research Service" pertaining to the public interest representation of the Board of Directors of the NIBS organization as provided for in the 1971 NIBS (HR 8398).

Please consider this letter as a request for NCSBCS to be heard if there is any further opportunity to be heard on the above referenced bill or similar legislation.

Thank you for this opportunity and if NCSBCS can be of further service to your committee, please advise me or Mr. Bernard E. Cabelus, Chairman of NCSBCS, State Building Inspector, Public Works Department, 525 State Office Building, Hartford, Connecticut 06115.

Very truly yours,

KERN E. CHURCH,
Chairman, Legislative Committee.

COMMENTARY ON AMENDMENTS TO THE BUILDING SCIENCES ACT OF 1971 PROPOSED
BY THE NATIONAL CONFERENCE OF STATES ON BUILDING CODES AND STANDARDS

State and local jurisdictions are currently being faced with federal regulatory programs greatly overlapping their responsibilities—programs that were developed without sufficient opportunity for the regulatory, technical and industrial communities to offer comments. As a result of not utilizing these resources, the programs are not as effective and workable as they need to be.

One of the elements making the model code approach to producing building regulations a workable system is the wide exposure given to the ongoing activities of the promulgating organizations. Their technical committees work in a public forum, and the provisions proposed for adoption into their codes are published well in advance of the meeting where these provisions are openly discussed prior to their adoption.

States, in their programs regulating building construction, are required to follow a process that includes widely-publicized public hearings prior to adopting building regulations.

The Building Sciences Act of 1971 establishes the Consultative Council as the line of communication between the National Institute of Building Sciences and the groups specified in Section 1004(h) of the Act. To ensure the effectiveness of the Institute, it is imperative this communication concept be strengthened by more clearly defining the role, composition and method of support for the Consultative Council.

The proposed amendment to Section 1004(h) (1001(c) 8, Page 9 line 7 of S-2103) would establish panels within the Council so that its expertise and influence may be focused and thereby be more effective. Limiting the size of the panels is necessary to ensure their ability to communicate within themselves and with the Board. This amendment would also provide for the necessary financial support of the Council.

The amendment proposed to Section 1006(c) (1001(e) 3, Page 11 line 11 of S-2103) would ensure effective communication of the Institute's actions to all affected parties and would provide the opportunity for them to offer testimony.

The proposed amendment of Section 1006(d) (1001(e) (4), Page 11 line 11 of S-2103) would establish the Consultative Council as a source of technical information, unbiased as possible, to provide comments to the Board before it takes action to develop new standards, select one from several standards that may treat the same technical matter, modify an existing standard or certify the acceptability of a material, system or process. These advisory comments will assist the Board, which will contain members with other than technical backgrounds, in making its decisions.

The proposed amendment to Section 1004(d) (1001(c) 4, Page 7, line 17 of S-2103) would strengthen the concept of the Board being an independent body by eliminating the possibility of it becoming self-perpetuating or unduly influenced by any organization.


Members must be fully qualified persons maintaining their representation and qualifications as provided for the initial Board in Section 1004 (a), as recommended by the Academic-Borough-Council by majority vote of the Board and confirmed by official representatives of the Consultative Council

1 and succeeding Boards shall be three years; except that
 2 (A) any member appointed to fill a vacancy occurring prior
 3 to the expiration of the term for which his predecessor was
 4 appointed shall be appointed for the remainder of such
 5 term; and (B) the terms of office of members first taking
 6 office shall begin on the date of incorporation and shall
 7 expire, as designated at the time of their appointment, one-
 8 third at the end of one year, one-third at the end of two
 9 years, and one-third at the end of three years. No member
 10 shall be eligible to serve in excess of three consecutive terms
 11 of three years each. Notwithstanding the preceding pro-
 12 visions of this subsection, a member whose term has expired
 13 may serve until his successor has qualified.

14 “(4) Any vacancy in the initial and succeeding Boards
 15 shall not affect its power, but shall be filled in the manner
 16 in which the original appointments were made, or, after
 17 the first five years of operation, as provided for by the
 18 organizational rules and procedures of the Institute.

19 “(5) The President shall designate one of the members
 20 appointed to the initial Board as Chairman; thereafter, the
 21 members of the initial and succeeding Boards shall annually
 22 elect one of their number as Chairman. The members of the
 23 Board shall also elect one or more of their Members as Vice
 24 Chairman. Terms of the Chairman and Vice Chairman shall

The Board shall designate special advisory panels from the membership of the Consultative Council, the number and composition of which shall be as determined necessary by the Board and as provided by section 1006(d). Each panel shall operate in accordance with organizational rules and procedures of the Institute and consist of not less than ten nor more than fifteen members possessing the training, experience and capabilities to properly advise the Board. Members of the Consultative Council and advisory panels while away from their homes or places of business and while engaged in duties pertaining to the activities assigned by the Board of the Institute shall be entitled to travel expenses, including per diem in lieu of subsistence, as set forth in subsection (f).

1 bership in which shall be available to representatives of all
 2 appropriate private trade, professional, and labor organiza-
 3 tions, private and public standards, code, and testing bodies,
 4 public regulatory agencies, and consumer groups, so as to
 5 insure a direct line of communication between such groups
 6 and the Institute and a vehicle for representative hearings
 7 on matters before the Institute. 

8 “(d) (1) The Institute shall have no power to issue any
 9 shares of stock, or to declare or pay any dividends.

10 “(2) No part of the income or assets of the Institute
 11 shall inure to the benefit of any Director, officer, employee,
 12 or any other individual except as salary or reasonable com-
 13 pensation for services.

14 “(3) The Institute shall not contribute to or otherwise
 15 support any political party or candidate for elective public
 16 office.

17 “(e) (1) The Institute shall exercise its functions and
 18 responsibilities in four general areas relating to building
 19 regulations, as follows:

20 “(A) Development, promulgation, and maintenance
 21 of nationally recognized performance criteria, standards,
 22 and other technical provisions for maintenance of life,
 23 safety, health and public welfare suitable for adoption by
 24 building regulating jurisdictions and agencies, including
 25 test methods and other evaluative techniques relating to

1 accept and use the nationally recognized performance cri-
 2 teria, standards, and other technical provisions developed
 3 for use in Federal, State, and local building codes and other
 4 regulations which result from the program of the Institute;
 5 (B) seek to assure that its actions are coordinated with re-
 6 lated requirements which are imposed in connection with
 7 community and environmental development generally; and
 8 (C) consult with the Department of Justice and other agen-
 9 cies of government to the extent necessary to insure that
 10 the national interest is protected and promoted in the exer-
 11 cise of its functions and responsibilities. ↑ ↑

12 “(f) (1) The Institute is authorized to accept contracts
 13 and grants from Federal, State, and local governmental
 14 agencies and other entities, and grants and donations from
 15 private organizations, institutions, and individuals.

16 “(2) The Institute may, in accordance with rates and
 17 schedules establish with guidance as provided under sub-
 18 section (b) (2), establish fees and other charges for services
 19 provided by the Institute or under its authorization.

20 “(3) Amounts received by the Institute under this sec-
 21 tion shall be in addition to any amounts which may be ap-
 22 propriated to provide its initial operating capital under sub-
 23 section (h).

24 “(g) (1) Every department, agency, and establishment
 25 of the Federal Government, in carrying out any building or

Submit and make available accounts of the actions it proposes to take,
 as much in advance of the date the actions will be taken as is practicable,
 in order that all affected parties may offer comments.

(d) Prior to exercising its functions and responsibilities described in subsections
 (a) (1), (a) (2), and (b), the Board shall obtain, and give due consideration to, the
 advice of a panel of the Consultative Council composed of representatives of the design
 professions, federal, state and local building code regulatory bodies and industry, possessing
 expertise appropriate to the technical matter being considered.

NATIONAL CONFERENCE OF STATES
ON BUILDING CODES AND STANDARDS,
Washington, D.C., December 31, 1971.

Hon. JOHN SPARKMAN,
Chairman, Subcommittee on Housing and Urban Affairs, U.S. Senate, New Senate
Office Building, Washington, D.C.

DEAR SENATOR SPARKMAN: Enclosed is a copy of my letter dated October 7, 1971 addressed to you pertaining to the above which emphasizes that the National Conference of States organization of official delegates of state officials who have the responsibility for their individual state codes or a delegate appointed by the Governor to represent the state is against any mandatory Federal provisions which would usurp the authority of the states to protect the citizens' public health and safety and that the Constitutional authority and responsibility of the states to protect their citizens in the codes and standards field be recognized and that the states and their political subdivisions be considered as the users of codes and standards when Federal legislative proposals are considered.

This Bill has been discussed by several Committees of NCSBCS and NCSBCS firmly supports the concepts of an acceptable over all coordinating organization which would not be controlled by any single organization, agency or exclusive group and it appears that the intent of a non-governmental National Institute of Building Sciences which will work through existing private organizations and agencies to serve as a coordinating center for the voluntary codes and standards system of the United States could feel this need.

The Executive Committee endorses the above Bill with the changes as recommended by the Chamber of Commerce of the United States and with the following additional changes:

(1) Page 7, Line 16, between the word "operation" and the word "as" insert:
"Vacancies must be filled from lists of highly qualified persons maintaining the representation and qualifications as provided for the initial board in section 1004(a) as recommended by the academies-research-council by majority vote of the board and confirmed by official representatives of the consultative council"

(2) Page 9, end of Line 3 add:

"The board shall designate special advisory panels from the membership of the consultative council, the number and composition of which shall be as determined necessary by the board and as provided by section 1006 (d). Each panel shall operate in accordance with organizational rules and procedures of the institute and consist of not less than ten nor more than fifteen members possessing the training, experience and capabilities to properly advise the board. Members of the consultative council and advisory panels while away from their homes or places of business and while engaged in duties pertaining to the activities assigned by the board of the institute shall be entitled to travel expenses, including per diem in lieu of subsistence, as set forth in subsection (f).

(3) Page 11, end of Line 11 add:

"(4) Publish and make available accounts of the actions it proposes to take, as much in advance of the date the actions will be taken as is practicable, in order that all affected parties may offer comments.

(d) Prior to exercising its functions and responsibilities described in subsections (a) (1), (a) (2) and (b), the board shall obtain and give due consideration to, the advice of a panel of the consultative council composed of representatives of the design professions, Federal, State and local building regulatory bodies and industry, possessing expertise appropriate to the technical matter being considered.

A marked-up copy of the above Bill incorporating proposed changes as recommended by the Chamber of Commerce of the United States and the changes proposed by NCSBCS is enclosed.

By action of its Executive Committee, NCSBCS urges prompt efforts to enact S. 1859—Building Sciences Act, 1971 incorporating the changes as recommended by the Chamber of Commerce of the United States and NCSBCS.

If I can be of any service to you in explaining the proposed changes or otherwise, please advise.

Yours very truly,

KERN E. CHURCH,
Chairman.

NATIONAL CONFERENCE OF STATES,
ON BUILDING CODES AND STANDARDS,
Washington, D.C., October 7, 1971.

Hon. JOHN SPARKMAN,
*Chairman, Subcommittee on Housing and Urban Affairs, Committee on Banking,
Housing and Urban Affairs, U.S. Senate, New Senate Office Building, Wash-
ington, D.C.*

Re H.R. 8393, the bill to create a National Institute of Building Sciences.

DEAR SENATOR SPARKMAN: The National Conference of States on Building Codes and Standards is an organization of official delegates who are State officials who have the responsibility for their individual state codes and standards or a delegate appointed by the governor to represent the State to the Conference. The Conference is just four years old but has established as some of its main goals the objectives outlined in the Building Sciences Act of 1971, to be implemented by the individual states based on programs utilizing existing organizations and coordinated by the states voluntarily working together.

The National Conference of States on Building Codes and Standards is against any mandatory Federal provision which would usurp the authority of the states to protect their citizens in the field of codes and standards for public health and safety. The Executive Committee of the Conference is on record as recommending that all research and technical assistance funded by Federal funds to assist the states on codes and standards must be responsive to the needs of State agencies having responsibility and authority to protect the public health and safety of its citizens.

To this end, the National Conference of States on Building Codes and Standards stresses the importance in considering legislative proposals that the constitutional authority and responsibility of the states to protect their citizens in the codes and standards field be recognized and that the states and their political subdivisions be considered as the users of the codes and standards.

Consider this as a request to be heard, if there is any further opportunity on this bill, or similar legislation authorizing Federal funds to accomplish objectives outlined by this bill.

On behalf of the delegates of NCSBCS, I thank you for this opportunity to submit a statement and would appreciate this letter being made a part of the record of hearings on the Building Sciences Act of 1971.

Yours very truly,

KERN E. CHURCH,
Chairman.

[Reprinted from page 656 of House Committee Hearings on Housing and Urban Development Legislation—1971]

The proposals studied locate a buildings standards and certification institute in a non-profit, non or quasi-government body or as a constituent of the National Academies. NIBS under the present bill would be incorporated either under the D.C. Non-profit Corporations Act or under charter by Congress. Experience in England suggests that in order to assure independent status, it would be necessary to plan for Federal financing on a continuing basis.

Such an institute probably does not belong in HUD or any Federal government department or agency. However, the function of research and development suggested for NIBS by the Douglas Commission but not by H.R. 8393 does belong in HUD. In addition, it would be possible to separate coordinating function (coordination of existing private organizations and public agencies) and to give it to HUD along *with the power to enforce it*. This would leave NIBS as a standards certification agency.

It would also be reasonable to place the institute under the jurisdiction of the National Conference of States on Building Codes and Standards. Under the U.S. Constitution the constitutional responsibility for fixing codes and standards is left to the States. In addition, States have shown increasing interest in this area recently. State laws now cover State building codes and State provisions for approval of industrial housing systems as well as reciprocity clauses.

H.R. 8393 gives very little emphasis to consideration of the role of the States stating only that the institute shall "establish and carry on a specific and continuing program of cooperation with the States and their political subdivisions designed to encourage their acceptance [of] its technical findings and of nationally recognized performance criteria, standards and other technical provisions for building regulations brought about by the institute." Such a program shall include trying to encourage States to comply by changing State laws and providing assistance in the development of inservice training programs for enforcement personnel.

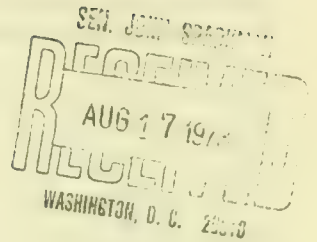
To what extent is additional research required for establishing performance criteria and standards and testing methods?

There is general agreement that private research in the building industry is fragmented as is the industry itself. Federal expenditure for R&D does not compare to that in other areas. See Table 4-30 page 195 of the pages duplicated from the Kaiser report for Federal expenditures for R&D for "Selected Agencies for Fiscal Year 1966". Despite the fact that Federal housing and community development funds have increased rapidly since that time, such funds are still low compared to funds in other areas.

Perhaps the most important research need is to expand study of user needs beyond what is required for achieving a safe and sanitary structure to include those factors which will assure a decent home and a suitable living environment.



SOCIETY OF AMERICAN
WOOD PRESERVERS, INC.



August 13, 1973

Honorable John Sparkman, Chairman
Subcommittee on Housing and Urban Affairs
Committee on Banking, Housing and Urban Affairs
United States Senate
Washington, D. C. 20510

Re: Statement on S. 2103 National Institute of Building Sciences
Act Submitted to the Subcommittee on Housing and Urban Affairs
of the Senate Committee on Banking, Housing and Urban Affairs
by the Society of American Wood Preservers

Dear Senator Sparkman:

In supporting the concept of S. 2103, the Society of American Wood Preservers believes this legislation would provide for a non-governmental approach to problems in developing and maintaining a rational relationship between code and regulatory requirements and building technology.

We strongly urge prompt and favorable action on this legislation in order to solve many long standing and persistent building code and standards problems.

Much attention has been directed at the lack of uniformity among building codes, failures to keep them current, and to restrictions on the use of new products and practices.

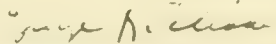
Much of the confusion can be attributed to the fact that there are more than 8,000 local governments in the United States with building codes. This is compounded by the fact that each of the fifty states has numerous departments and agencies active in the code and regulatory field. Too, there are more than three dozen Federal agencies concerned with codes and standards.

When this is considered ... in view of the multitude of manufacturers subject to codes and standards in production, architects and engineers in design, and homebuilders in general ... it is easy to see that establishment of a non-governmental National Institute of Building Sciences, under the advice and with assistance from the National Academy of Sciences--National Academy of Engineering--National Research Council, would be instrumental in coordinating development of performance criteria, and evaluation and prequalification of new building technology. In addition, NIBS will serve as a center for assembly and dissemination of technical information, and in general, promote building codes and standards progress. Lastly, we believe that favorable action on S. 2103 will provide the vehicle necessary for standards and provisions to be accepted nationally on the basis of technical excellence.

We respectfully request that our statement be made a part of the hearings record.

Thank you very much.

Yours very truly,



George K. Eliades
Executive Vice President

cc: Mr. Irvin B. Winkleman
President, SAWP

The CHAIRMAN. Senator Dole is scheduled to come next. He is delayed and will be here a little later.

Next, Mr. William R. Hutton, executive director, National Council of Senior Citizens.

Mr. Hutton, we are glad to have you, sir.

**STATEMENT OF WILLIAM R. HUTTON, EXECUTIVE DIRECTOR,
NATIONAL COUNCIL OF SENIOR CITIZENS; ACCOMPANIED BY
RICHARD M. MILLMAN, ATTORNEY, HOUSING COUNSEL NCSC**

Mr. HUTTON. Thank you very much, Mr. Chairman.

I am accompanied by Mr. Richard M. Millman. Mr. Millman is an attorney and a housing specialist who is special counsel on housing for the National Council of Senior Citizens.

The CHAIRMAN. Very well. Your entire statement will be placed in the record (see p. 2043). You may proceed as you see fit.

Mr. HUTTON. Thank you, Mr. Chairman. Perhaps I will read a little of this testimony and then perhaps go off the cuff for a few remarks which might be helpful.

I want to thank you, of course, for giving us this opportunity to appear before you on behalf of the National Council of Senior Citizens which is a nonprofit, nonpartisan organization of older people's clubs throughout the United States. We have a combined membership in those clubs of more than 3 million members. And we believe, Mr. Chairman, that after perhaps income and health, housing is the most important factor affecting the well-being of our elderly citizens.

In addition, housing is the most, if you like, No. 1 expenditure for our older Americans. They spend about 34 percent of their total income for shelter in contrast to about 23 percent for younger persons.

At previous sessions of this subcommittee, we expressed our dismay and deep concern over President Nixon's moratorium in housing programs and the sharp curtailment and hasty termination of many housing and supporting programs. We were relieved to hear the decision of U.S. District Judge Charles R. Richey that the moratorium is clearly illegal as it affects the construction of federally subsidized housing.

However, the very fact that this court decision was necessary goes only to underline what we believe is a complete abandonment of the commitments made by this Government as far back as 1949 to provide low-cost housing for all Americans, regardless of their ability to pay the now exorbitant mortgage loan charges.

Further proof of this abandonment is evidenced by the refusal of this administration to move forward on the recommendations of the White House Conference on Aging which said:

A fixed proportion of all Government funds—Federal, State, and local—allocated to housing and related services, shall be earmarked for housing for the elderly, with a minimum production of 120,000 units per year.

It is truly outrageous that in face of the President's pledge to move on all the recommendations of that 1971 conference—if I remember correctly, Mr. Chairman, at the end of that conference, he said he was going to see that these recommendations would not gather dust in the National Archives. And this is just what they have been gathering ever since that conference finished. But not only have you failed in

this rather modest goal of 120,000 units, but attempted to halt all construction.

This determination on the part of the administration to destroy the federally subsidized housing movement has had far-reaching effects. This attitude has given new impetus to those on the local level who oppose construction of housing for the elderly on purely selfish, profit-motivated grounds.

And I want to relate what we believe is a classic example of the rippling effect of the President's decision in the case of the frustration that we have had surrounding efforts by the National Council of Senior Citizens, for example, to construct low-cost housing for the elderly in nearby Montgomery County, Md.

Over 3 years ago, the National Council of Senior Citizens conceived the idea of building a model project for senior citizen housing in the Greater Washington area. We thought this would be a marvelous place to have a showplace on senior citizen housing.

The federally financed project was to be a viable workshop for elderly housing, open to all those interested in the development and continued growth of similar housing throughout the country.

Land was located in Montgomery County, Md., along the banks of the Potomac River, approximately 10 miles west of the White House, and with the help of architects, engineers, and land planners, a complete plan was prepared and submitted in November of 1970 to the Montgomery County Board of Zoning Appeals requesting a special zoning exception.

After lengthy hearings conducted in the late winter and spring of 1971, the application received the Board's approval on June 1, 1971. However, sir, as we were soon to discover, this was merely a beachhead.

Beginning in late June of that year and continuing even now, we have encountered, and thus far successfully penetrated a vast maze of legal maneuvers which have included appeals by a handful of citizens and the Planning Commission of Montgomery County. Thus, we have suffered and waited while our tax dollars supported the ludicrous spectacle of one arm of Montgomery County government militantly protesting a decision of another.

Lately, as we move confidently into the Maryland Court of Appeals for the second time, another hurdle has been raised. The Montgomery County Council has recently, through the lobbying efforts of our opponents, proposed amendments to the zoning laws which would not only permanently prevent us from going forward with the model project, but which would push housing for the elderly in Montgomery County into unacceptable zoning categories rendering other projects almost untenable and which would zone elderly people out of residential neighborhoods.

These amendments were offered under the guise of "encouraging" elderly housing, but to our knowledge, the council neglected to invite testimony from any one of a number of senior housing experts available in the Capital area. We appeared at the public hearing and hopefully were able to persuade the council to preserve our project and to pass legislation which will truly encourage senior housing in Montgomery County.

Now, we are informed by our attorney that the earliest we can expect a decision from Maryland's high court is in February of 1974—

almost 4 years after the idea was conceived, and 3 years after we obtained the initial approval. As we have often pointed out in these hearings, seniors are always welcomed, but so frequently, many times, the welcome is for someone else's neighborhood, not ours.

We respectfully urge the Members of Congress to take up the torch of national leadership which the President has discarded. Older Americans have been continually frustrated—that example which I gave is one example; there are many, many others in which the effect is really quite serious. We are dealing in that particular case in a housing project which by the time it arrives will fit today's children, it gets so long to get a housing development through, underway, and created.

I find the National Council of Senior Citizens is really working for young people by the time we get the housing finished. We turn now to the Congress to give substance to this empty rhetoric of the President.

With regard to desperately needed housing for older people, we were forced to call a special national legislative conference so that older Americans could present their proposals for a better life for all Americans to Congress and the Nation. And that conference just was held last month here in Washington and where we could seek the leadership of the Congress. We are encouraged by congressional actions designed to assert its proper leadership role in formulating national policy.

We are pleased that some of the Housing recommendations developed for this conference are incorporated in the package of bills presently before this subcommittee, S. 2179, 2180, 2181 and 2185, all introduced by Senator Harrison A. Williams, Jr., of New Jersey.

The housing recommendations of the NCSC are contained in "A program for the 93d Congress." These are, and they still stand:

A minimum annual production of 120,000 units should be made an integral part of a comprehensive national policy for housing for the elderly. Before the moratorium was applied the administration has talked about an annual goal for senior housing at about half the proposed minimum annual production rate of 120,000 units.

We support the position of Assistant Secretary for Housing for the Elderly should be established at HUD. A Special Assistant for Housing for the Elderly was appointed who does not have the authority nor status of an Assistant Secretary.

We believe the Section 202 Housing Program for the Elderly should be restored with an increased level of funding. This program for all practical purposes has been abolished.

Up to 60 percent of subsidized housing units occupied by the elderly should be eligible for rent supplement.

Funds for this program have been impounded.

Federal funding should be made available to provide trained security personnel at public housing projects. Federal operating subsidies to local housing authorities that could have been used for guard and other services related to the physical security of residents have either been curtailed or denied by the Nixon administration.

The congregate meals provisions of the 1970 Housing Act should be amended to include funding for the cost of food.

Let me say from the outset that we strongly support these four bills of Senator Williams. Our only concern is that perhaps they do not go far enough in meeting the pressing housing needs of older Americans. We are most grateful that you, Senator Williams in the step you have taken toward at least attempting to remedy the disastrous effects of this administration's housing policy.

We do have some brief comments on each of these bills:

S. 2179, a demonstration program to provide direct financing of housing for the elderly under Section 236 of the National Housing Act.

This bill is appealing to us because it blends the advantages of two housing programs, Section 202 and 236. The 202 program provided low-cost direct Federal loans to housing sponsors for units specially designed to the needs of the elderly. In contrast, the 236 program subsidizes the interest payments of sponsors on loans from the private sector.

In addition, this bill would establish a "revolving fund" for senior citizen housing with the mortgage payments returning into the loan fund and then becoming available for other loans.

We would urge that special consideration be given to the construction of congregate housing facilities and we need more facility patents for feeding, for example, and more experimentation of that kind to make people not only live efficiently in that kind of congregate housing, but to live happily.

S. 2180, funding for security programs in Federal housing projects.

We have got to understand there is a very serious problem of crime in and around housing facilities for the elderly. As a matter of interest, I have to tell you when we sponsored this recent conference in Washington, D.C., in which we brought 10,000 elderly, many of them had to return to their housing projects in faraway cities late at night. And we had a great deal of trouble with older people. We had to provide special double guards so they could get into their homes late at night without fear of molestation at night, particularly in some of the East Coast areas.

The hearings of the committee chaired by Senator Williams have been invaluable in documenting this depressing development.

More depressing than the problem of crime is that we have methods and hardware which can drastically improve this situation, but the local housing authorities are too hard pressed financially to make expenditures for such "luxury" items.

This legislation is also needed to clarify the responsibility of the Federal Government, specifically the Department of Housing and Urban Development, in the security and protection of federally subsidized housing facilities and its residents.

We believe the bill should encourage and utilize the direct involvement of senior citizens in making their buildings safe, such as through the use of supplemental patrols. These patrols could also be watchful of fire hazards.

S. 2181 deals with funding for the conversion of existing single family housing units into what is called intermediate housing—I am not sure I like the title very much—for low or moderate income elderly.

The demonstration of this innovative approach to senior citizen housing is important to the development of housing arrangements

which facilitate the independent living of older people. To be a successful experiment, we would suggest that flexibility in living arrangements be encouraged. We believe that arrangements such as allowing congregate kitchens and dining rooms and feeding at different times would be successful in ending isolation and facilitating independent living.

In addition, special consideration should be given to the development of the supportive service centers which are an integral "backup" to a community of intermediate housing units.

Finally, S. 2185, continuation of the Section 202 housing program.

We have continually supported the efforts of Senator Williams to rejuvenate this most successful program. I would like to stress the need again to encourage congregate housing within this program.

Thank you very much for this opportunity to express our support for these bills and the other housing needs of older Americans.

The CHAIRMAN. Thank you, Mr. Hutton. You have given us a powerful statement, some very fine suggestions. We appreciate it.

Mr. HUTTON. Thank you very much, Mr. Chairman.

Senator WILLIAMS. Let me ask you—

The CHAIRMAN. Yes.

Senator WILLIAMS [continuing]. What was the closing date of the White House Conference on Aging?

Mr. HUTTON. December 2 or 3. I think December 2, 1971, Mr. Chairman.

Senator WILLIAMS. The end of the year, 1971?

Mr. HUTTON. Yes.

Senator WILLIAMS. What was the conference conclusion and recommendation on housing for the elderly?

Mr. HUTTON. I have part of it in this testimony, Mr. Chairman. On page 2, the recommendations call for "a fixed proportion of all Government funds—Federal, State and local— allocated to housing and related services, shall be earmarked for housing for the elderly, with a minimum production of 120,000 units per year."

I guess I have not got all of the Conference on Aging reports here, Mr. Chairman, but I can provide them to you. The fact is there were 3,600 delegates and observers at that conference. There were people from all parts of the United States, from rural, from urban areas. They were from the South and from the North, Republicans as well as Democrats. And they were united in the idea of developing housing for the elderly as a desperate need. And this administration has turned its back on those recommendations.

Senator WILLIAMS. I was going to ask you, you concluded the conference the end of the year, 1971. Did the President make any observations at the end of that conference?

Mr. HUTTON. Yes, he did.

Senator WILLIAMS. What did he say about housing?

Mr. HUTTON. On the housing situation, I am not quite sure, Mr. Chairman. I have not got it with me. I think he mentioned something supporting the general principles of housing for the elderly. He gave out with a great deal of rhetoric with regard to housing our old people, but he did not specifically support any of the recommendations.

Senator WILLIAMS. Well, since that time, what positively has been proposed by the administration for meeting the housing needs of older people in this country?

Mr. HUTTON. Nothing. No, sir.

Senator WILLIAMS. A total zero?

Mr. HUTTON. Absolute zero. In fact, we have gone back. Housing is stopped for the elderly.

Senator WILLIAMS. This is running out on a commitment then that was made at the time of the need of the conference?

Mr. HUTTON. Absolutely. As he did in all the other issues of the conference, but particularly housing. It is housing we are dealing with now. And housing, the administration has come up with an absolute duck egg.

Senator WILLIAMS. Well, you know that I am the sponsor of these four bills that you mentioned.

Mr. HUTTON. Yes, I do, Mr. Chairman.

Senator WILLIAMS. Starting with a revitalization of the 202 housing.

Mr. HUTTON. This was one of the features of the White House Conference on Aging.

Senator WILLIAMS. This is a direct loan to church groups, fraternal societies, other organizations of people. And these are for older people, nonprofit. I have observed, I have looked, gone to and looked, at a score or better of these 202 housing projects. I have yet to see one that has failed financially on as a beautiful living place. They have been superior in meeting the needs of older people.

And do you know of any one of them that has failed either sociologically or financially?

Mr. HUTTON. No, we do not, sir.

If I may turn the microphone to Mr. Millman here who has had a great deal of experience around the country in this area, we have not been able to find any one 202 project which has failed or which is not a good, wonderful place for older people to live.

Mr. MILLMAN. Senator, I concur 100 percent in your observation, and I think it highlights a point that cannot be highlighted too often—the aspect of sociological. We use a term we like to think we coined—"a new life style." We think there is a particular "life style" for elderly, and we like to think that the elderly must be treated separately from housing in general; that the housing unit for an elderly person is more of an environment, it is more important to him, then almost anything else because it consumes so much of his time.

Therefore, we applaud your efforts and this committee's efforts and the Senate's efforts to earmark specifically a program and funds for the elderly, a flexible program. That is what is really needed. There needs to be a commitment to recognize the problems of the elderly and highlight them and realize that time runs out for the elderly and realize the need.

I am sure you are well aware of the fact that we have 6 million elderly citizens who are living in dilapidated or substandard housing and that we have 5 million of our elderly below the poverty level. I would like to point out one other statistic which I think is very meaningful that ought to be borne in the front of everyone's mind when we consider the plight of the elderly. I am referring to testimony that I gave last year on the Housing and Urban Development Act of 1972 before the House Banking and Currency Committee.

My testimony was also supported by the other agencies involved with the elderly, but there was a statistic that we all concurred on that I think it important. At that time, we were suggesting that at a mini-

mum, 25 percent of the appropriations which then were dealing with just the interest subsidization factor rather than the direct loan aspect as you have suggested under 202 or your modified version of 236, and we pointed out that if you use that 25 percent factor for just the interest subsidization, it would still take 180 years to meet the housing needs of the elderly as they existed in 1968.

We can demonstrate that mathematically, but here, what we have now is not only no attempt to meet those needs, but a complete curtailment of any effort to meet any needs. And on top of that, we have no realization yet of a program that is designed for the elderly.

The idea, then, is designed for the elderly and the money. When you get those two items, you will continuously observe, Senator, what you have observed, projects that are successful 100 percent of the time, projects that are models and showcases and projects that are without scandal and projects that all of us can be proud of.

Senator WILLIAMS. And also secure.

Mr. MILLMAN. And secure.

Senator WILLIAMS. I do not want to take any more time. I wish we had more time. I would like to see whether there is any glimmer of hope that some light will dawn down there in this White House on this aspect of their negative approach to life. But maybe the law courts will help with these impoundment decisions. Maybe our legislation here will break through at least to release money for present programs.

But to meet their objection to the direct loan program and their so-called budget impact, we know that over the longhaul, far less budget impact occurs under 202 than 236. At any rate, we put a bill in that involved a financing system that would not have that big initial budgeting effect. That is 2179.

We are giving this administration every chance on their terms to meet the housing needs of older people. And I hope in this case—and I am not being overreaching, but even praying, that some light will dawn down there.

Mr. HUTTON. We have been in to see the Secretary and Assistant Secretary. We have talked, we have pleaded with them to take senior citizens' housing out of that moratorium—because older people are dying out there that need homes. They have not got the time, Mr. Chairman. They have not got the time.

Senator WILLIAMS. It is the saddest thing in life to read the story of life today of older people. Did you read the story out of Miami Beach where 60 percent of the people—

Mr. HUTTON. Yes, I did.

Senator WILLIAMS [continuing]. Are over 65? Reduced to shoplifting just to live, to get food. You know, this is one of the darkest hours. I think, any group of people has ever seen in this country.

I am not referring to all the business in the caucus room; I am talking about the lives in these times particularly of older people.

Well, thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

I would like to mention one thing in line with what Senator Williams is talking about. There was a newspaper story in the Washington Post a few days ago that described the condition of isolation of many poor senior citizens. And it deals exactly on the basis as the Miami story did, but talking about no communication, no telephone,

no homemaker services, and transportation and things of that kind that do isolate them.

And it seems to me that we might be giving some thought to relieving those situations.

Thank you very much. We appreciate your very competent statement.

[The complete statement of Mr. Hutton and additional information relative to this subject follow:]

STATEMENT OF WILLIAM R. HUTTON, EXECUTIVE DIRECTOR, NATIONAL
COUNCIL OF SENIOR CITIZENS

Mr. Chairman and members of the subcommittee, I want to thank you for giving me this opportunity to appear briefly before you today on behalf of the National Council of Senior Citizens, an non-profit, non-partisan organization of over three thousand older people's clubs throughout the United States, with a combined membership in those clubs of three million older Americans.

We believe that housing, perhaps after income and health, is the most important factor affecting the well being of our elderly citizens. In addition, housing is the number one expenditure for older Americans. They spend about 34% of their total income for shelter in contrast to about 23% for younger persons.

At previous sessions of this Subcommittee, we have expressed our dismay and deep concern over President Nixon's moratorium in housing programs and the sharp curtailment and hasty termination of many housing and supporting programs. We are relieved to hear the decision of U.S. District Judge Charles R. Richey that the moratorium is clearly illegal as it affects the construction of federally subsidized housing. However, the very fact that this court decision was necessary goes only to underline the complete abandonment of the commitments made by this government as far back as 1949 to provide low-cost housing for all Americans, regardless of their ability to pay the now-exorbitant mortgage loan charges.

Further proof of this abandonment is evidenced by the refusal of this Administration to move forward on the recommendations of the White House Conference on Aging which said:

"A fixed proportion of all Government funds—Federal, State and local—allocated to housing and related services, shall be earmarked for housing for the elderly, with a minimum production of 120,000 units per year."

It is truly outrageous that in face of the President's pledge to move on all the recommendations of that 1971 Conference, he has not only failed to reach this rather modest goal, but attempted to halt all construction.

This determination on the part of the Administration to destroy the federally subsidized housing movement has had far reaching affects. This attitude has given new impetus to those on the local level who oppose construction of housing for the elderly on purely selfish, profit-motivated grounds. The classic example which I would relate to you of the rippling affect of the President's decisions is the case of frustration surrounding efforts by the National Council of Senior Citizens to construct low-cost housing for the elderly in nearby Montgomery County, Maryland.

Over three years ago, the National Council of Senior Citizens conceived the idea of building a model-project for senior citizen housing in the Greater Washington area. The federally financed project was to be a viable workshop for elderly housing, open to all those interested in the development and continued growth of similar housing throughout the country.

Land was located in Montgomery County, Maryland, along the banks of the Potomac River, approximately ten miles west of the White House, and with the help of architects, engineers, and land planners, a complete plan was prepared and submitted in November of 1970 to the Montgomery County Board of Zoning Appeals requesting a special zoning exception.

After lengthy hearings conducted in the late winter and spring of 1971, the application received the Board's approval on June 1, 1971. However, as we were soon to discover, this was merely a beachhead.

Beginning in late June of that year and continuing even now, we have encountered, and thus far successfully penetrated a vast maze of legal maneuvers which have included appeals by a handful of citizens and the Planning Com-

mission of Montgomery County. Thus, we have suffered and waited while our tax dollars supported the ludicrous spectacle of one arm of Montgomery County Government militantly protesting a decision of another.

Lately, as we move confidently into the Maryland Court of Appeals for the second time, another hurdle has been raised. The Montgomery County Council has recently, through the lobbying efforts of our opponents, proposed amendments to the zoning laws which would not only permanently prevent us from going forward with the model project, but which would push housing for the elderly in Montgomery County into unacceptable zoning categories rendering other projects almost untenable and which would zone elderly people out of residential neighborhoods.

These amendments were offered under the guise of "encouraging" elderly housing, but to our knowledge the Council neglected to invite testimony from any one of a number of senior housing experts available in the Capitol area. We appeared at the public hearing and hopefully were able to persuade the Council to preserve our project and to pass legislation which will truly encourage senior housing in Montgomery County.

Now we are informed by our attorney that the earliest we can expect a decision from Maryland's High Court is in February of 1974—almost four years after the idea was conceived, and three years after we obtained the initial approval. As we have often pointed out, seniors are always welcomed—but many times the welcome is for someone else's neighborhood.

We respectfully urge the members of Congress to take up the torch of national leadership which the President has discarded.

Older Americans have been continually frustrated by the broken promises of the Nixon Administration. We turn to the Congress to give substance to the empty rhetoric of the President.

Having given up on the President, the NCSC was forced to call a special National Legislative Conference so that older Americans could present their proposals for a better life for all Americans to Congress and the nation. That Conference was appropriately held last month here in Washington where those promises were made and broken, and where we could seek the leadership of Congress. We are increasingly encouraged by Congressional actions designed to assert its proper leadership role in formulating National policy.

We are pleased that some of the Housing recommendations developed for this Conference are incorporated in the package of bills presently before this Subcommittee. S. 2179, 2180, 2181 and 2185, all introduced by Senator Harrison A. Williams, Jr. (D., N.J.).

The housing recommendations of the NCSC are contained in "A Program for the 93rd Congress". These are:

A minimum annual production of 120,000 units should be made an integral part of a comprehensive national policy for housing for the elderly. Before the moratorium was applied, the Administration had talked about an annual goal for senior housing at about half the proposed minimum annual production rate of 120,000 units.

The position of Assistant Secretary for Housing for the Elderly should be established at HUD. A Special Assistant for Housing for the Elderly was appointed who does not have the authority and status of an Assistant Secretary.

The Section 202 Housing Program for the Elderly should be restored with an increased level of funding. (This program has for all practical purposes been abolished.)

Up to 60 per cent of subsidized housing units occupied by the elderly should be eligible for rent supplement.

Funds for this program have been impounded.

Federal funding should be made available to provide trained security personnel at public housing projects. Federal operating subsidies to local housing authorities that could have been used for guard and other services related to the physical security of residents have been curtailed or denied by the Nixon Administration.

The congregate meals provisions of the 1970 Housing Act should be amended to include funding for the cost of food.

Let me say from the outset that we strongly support these four bills. Our only concern is that they do not go far enough in meeting the pressing housing needs of older Americans. We are most grateful that you, Senator Williams, have taken the step you have toward remedying the disastrous effects of the President's action. You are to be commended.

We do have some brief comments about each of these bills.

S. 2179—a demonstration program to provide direct financing of housing for the elderly under Section 236 of the National Housing Act.

This bill is appealing to us because it blends the advantages of two housing programs, Section 202 and 236. The 202 program provided low-cost direct Federal loans to housing sponsors for units specially designed to the needs of the elderly. In contrast, the 236 program subsidizes the interest payments of sponsors on loans from the private sector.

In addition, this bill would establish a "revolving fund" for senior citizen housing with the mortgage payments returning into the loan fund and then payable from other loans.

We would urge that special consideration be given to the construction of congregate housing facilities and a variety of living arrangements as alternatives to institutionalization.

S. 2180—Funding for security programs in Federal housing projects.

There is a serious problem of crime in and around housing facilities for the elderly. The hearings of the Subcommittee on Housing for the Elderly of the Special Committee on Aging, chaired by Senator Williams have been invaluable in documenting this depressing development.

More depressing than the problem of crime, is that we have methods and hardware which can drastically improve this situation but the local housing authorities are too hard pressed financially to make expenditures for such "luxury" items.

This legislation is also needed to clarify the responsibility of the Federal government, specifically the Department of Housing and Urban Development, in the security and protection of Federally subsidized housing facilities and its residents.

We believe the bill should encourage and utilize the direct involvement of senior citizens in making their buildings safe, such as through the use of supplemental patrols. These patrols could also be watchful of fire hazards.

S. 2181—Funding for the conversion of existing single family housing units into "intermediate housing" for low or moderate income elderly.

The demonstration of this innovative approach to senior citizen housing is important to the development of housing arrangements which facilitate the independent living of older people. To be a successful experiment, we would suggest that flexibility in living arrangements be encouraged. For example, we believe that arrangements such as allowing congregate kitchens and dining rooms would be successful in ending isolation and facilitating independent living.

In addition, special consideration should be given to the development of the supportive service centers which are an integral "back-up" to a community of intermediate housing units.

S. 2185—Continuation of the Section 202 housing program.

We have continually supported the efforts of Senator Williams to rejuvenate this most successful program. I would like to stress the need to encourage congregate housing within this program.

Thank you very much for this opportunity to express our support for these bills and the other housing needs of older Americans.

HARFE POSITION ON HOUSING FOR THE ELDERLY

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INTRODUCTION

Our objective in making this proposal is to secure good housing at reasonable rentals. We who are making the proposal are members of the National Association of Retired Federal Employees.

This association was formed over fifty years ago. It has grown from a group of 14 men in Washington, D.C. to more than 169,000 Civil Service annuitants and survivors living throughout the fifty states, Puerto Rico, the Canal Zone and the Republic of the Philippines.

Our members, as well as other elderly people, can be regarded as being in three economic groups: (1) below the poverty level, (2) low and medium income, and (3) affluent.

The proposals that follow are designed to aid the elderly who are in the middle group.

Retired persons in the first and third groups have housing problems but we think they can best be met by programs other than the one we propose.

Role of Government in Housing

We quote a statement prepared by the Committee on Community Projects of Chapter 357 of Takoma Park, Maryland:

"We were taught many years ago that the role of government is to do for the individual what he needs to have done and cannot do for himself. The principle applies to housing, we have learned from experience.

"Having learned from fellow members in a NARFE chapter that housing is very much needed by people in our age bracket and knowing we could not by ourselves alone supply this housing, we asked people in private enterprise if they could supply the needed housing. When we were told that they could not supply the housing at the rents the elderly could afford, we asked representatives of city, county and state governments if they could supply the needed housing. They answered, the only way they could supply the housing would be if the housing was subsidized by the federal government.

"As private enterprise and local and state governments could not furnish housing, we turned to an agency in the federal government, HUD, and that branch of the federal government met our need.

"The problem how to provide housing to the elderly is a well known problem. Many people in our area have given thought to it and all the people we have consulted agree that housing can only be provided at rentals the elderly can afford if the housing is subsidized by the federal government.

"This judgment is confirmed by the tenants in Takoma Tower, a 202 project, as they say they are very fortunate in having an opportunity to live in this retirement home.

"The Takoma Park experience is not unique. We who are members of NARFE frequently meet in conferences. We tell members from other areas what is happening in our area and we talk about housing as well as other subjects. From them we learn that there are successful projects in other communities.

"We can add that the special Senate Committee on Aging has held hearings on housing for the elderly. In the report on these hearings we find the statement Section 202 housing for the elderly has never had a failure or a foreclosure.^{1/}

"We hope we have clearly shown that the federal government performs a needed function in aiding in the production of housing."

Basic Elements in Our Program for Financing

We propose direct loans from the federal government. We are proposing a financing arrangement which is the same as used in the 202 program. We shall add features that were not in the 202 program.

We would have the federal government accumulate the money. When we say accumulate funds, we do not mean, take money paid in by the general taxpayer and hand it over to a building construction organization. We propose that the federal government borrow the money and lend it to the non-profit group which will construct the building.

We do not expect to be able to completely relieve the taxpayer and have the tenants contribute enough to make the projects self-sustaining, but we hope to almost achieve that goal.

We think the federal government can accumulate the needed money, without placing a heavy burden on the general taxpayer by the use of a fund and a special series of bonds.

We believe we are required to repeat the suggestion that there be a trust fund and a special series of bonds in more specific terms in order to be clearly understood.

We can more clearly state our proposal by saying there should be:

- (a) a board of directors who are competent and reliable,
- (b) a staff of persons working under their direction;
- (c) an accumulation of purchasing power (money); and

(d) a means whereby this purchasing power be made available to builders of housing for the elderly.

Not only should we be clear in what we are proposing, we should try to show that what we are proposing is feasible. Our method of demonstrating feasibility is show that each of the elements in our proposal is now used in a government operation.

The element in our proposal that there be a board of directors can be shown to be feasible by directing attention to the board of trustees of the Social Security program and the Board of the Medicare program.

^{1/} Housing for the Elderly, a Status Report. Prepared by the special Committee on Aging, United States Senate, April, 1973, 93rd Congress, 1st Session. U.S. Government Printing Office, Washington, D.C. 20402.

The trustees of the Social Security and Medicare programs are the Secretary of the United States Treasury, the Secretary of Labor and the Secretary of Health, Education and Welfare. The Secretary of the Treasury is designated by law as the Managing Trustee. The Commissioner on Security is the Secretary of the Board.

As our program is in the field of housing, the fund we are proposing could be called the Trust Fund for Housing for the Elderly. Also, because our program is in the field of housing, the Secretary of the Department of Housing and Urban Development should be a member of the board and should be designated as Secretary of the Board of Trustees.

Obviously the board of trustees will need a staff to carry on the operations of the program. So we suggest there be a staff made up of persons in the Department of Housing and Urban Development who have had experience in operating the HUD 202 and 236 programs, plus additional people as needed.

To demonstrate that it is feasible to issue and sell bonds and to loan the money to a governmental organization so that it can operate, we call attention to the method used by U.S. Small Business Administration and Tennessee Valley Administration.

A precedent that is very much like what we propose is the method used by the federal agency that finances Public Housing. We submit a copy of the section of the federal law governing the method of financing which we received from the United States Treasury Department:

"Common Characteristics of Public Housing and
Urban Renewal Project Notes

Section 5(d) of the United States Housing Act of 1937, as amended, and Section 102(g) of the Housing Act of 1949, as amended, provide that the interest on Project Notes is exempt from Federal income tax. In practically all instances, the interest is also exempt from state taxes in the state of issuance. In addition, the interest on Notes issued by local agencies in the District of Columbia, Puerto Rico, the Virgin Islands and the various Indian nations is exempt from taxation by any state or territory, as well as taxation by the United States.

"National banks and Federal Reserve member banks may deal in, underwrite and purchase Project Notes for their own account. The Notes are eligible for purchase in unlimited amounts by national banks and, to the extent permitted by state law, by state member banks of the Federal Reserve System. The Notes will be accepted as security for deposits of public moneys in general, limited, and special depositories, including the Treasury tax and loan accounts, pursuant to Treasury Department regulations.

"The paying agent for Project Notes is designated and compensated by the purchaser and must be a bank or trust company which is a member of the Federal Reserve System or the Federal Deposit Insurance Corporation. Validity of the Notes is completed by the signature of such paying agent on each Note. The Notes are issued in bearer form with interest payable at maturity and normally vary in maturity from three to twelve months. They are issued in denominations of not less than \$1,000 as specified by the purchaser. The denominations normally specified are \$1,000; \$5,000; \$10,000; \$25,000; \$50,000; and \$100,000. There are customarily two offerings of Project Notes each month."

We would depart from this precedent in one respect. There should be notes in denominations of less than \$1,000. We think there should be notes as low as \$100.

Specific Proposals for Financing

We propose there be a statement on the bonds we propose that the proceeds from their sale will be used to construct housing for the elderly. We think by stating the purpose for which they were issued, people desiring housing for the elderly will purchase them.

We think the bonds could be promoted in a way which would cause prospective tenants to purchase them. People in their working careers should be informed that if they purchased these bonds they could use them after retirement to pay rent in a project financed by the Trust Fund for the Elderly. A further inducement to purchase these bonds would be to have them bear a higher rate of interest if they were used to pay rent.

To discourage tenants from buying bonds and using them immediately to pay rent, defeating the purpose of the bonds, the provision would be printed on the bonds that the higher than usual interest rate would be paid only if the bonds were held for at least one year.

We think that children with elderly parents, who plan to maintain their parents outside their homes, would purchase the bonds as a way of securing a discount on the rent payments.

Wealthy people, who are not prospective tenants, might be encouraged to purchase these bonds through tax exemptions.

The money received from the sale of these bonds would be deposited in the Trust Fund for Housing for the Elderly. This method of financing housing by issuing and selling bonds should be the principal source of funds. We hope that the time will come when it is the only source of funds needed, but at the start of the program and later, if the bonds do not bring in enough money, Congress should allocate money to the Trust Fund for Housing for the Elderly.

Groups of senior citizens and chapters of the national associations of the elderly should be advised as to how this program is to be financed and encouraged to act as salesmen of the bonds. Elderly men and women will gain if the bonds sell well.

A limitation should be placed on the use that may be made of money borrowed from this fund.

Money could be borrowed from this fund solely for the purpose of constructing multi-unit, rental housing projects. The amount of money in the fund will determine the number of applications for loans that will be honored. The more bonds sold, the more money will go into the fund, the more money in the fund the more projects will be built, assuming applications for loans are on hand.

The payments on the loan, both principal and interest, would be paid into the fund. This financing arrangement could be described as a revolving fund. Money in the fund would be used over and over again.

The term of the mortgages should be 50 years as is provided in the 202 program. The loans may be in an amount not exceeding 100 percent of the total cost of construction.

The interest on the mortgages should not be 3 percent, but the rate which the federal government is paying currently when it borrows money.

This loan, which we have been discussing, is a construction loan. There should be available what is called a "preliminary" loan in the public housing program, and a "seed money" loan in private construction.

The use that is made of the "preliminary" or "seed money" loan is to secure an option on a site and to pay for the services of architects, engineers, consultants, and filing fees.

The need for a preliminary loan will arise before there is a need for a construction loan. The group or organization that decides there is a need for a housing project for the elderly should have a city or county governmental agency to which it can apply for a preliminary loan.

The city or county agency should be given the authority to decide whether the need for the project exists and if it does, send the application with its endorsement to the administrative office of the Trust Fund for Housing for the Elderly.

We have not suggested that local government -- state, county or municipality -- contribute to the construction or preliminary loans. The one place in this program where we propose that local government pay money is where a client, or ward of local government, is housed in a project financed by the Trust Fund for Housing the Elderly; we think local governments should have the privilege of housing their clients in a project we are proposing and when a local government does this, it should pay the management the difference between what the client is able to pay and the amount of rent paid by the self-sustaining tenants.

An Explanation Why We Propose the Trust Fund

We should explain that the 236 program for subsidizing housing was stopped because the money used to pay interest on loans appeared on the budget of the Department of Housing and Urban Development as if this money was used in making expenditures and the money paid by the borrowers -- the amounts amortizing the loan and paying interest -- did not appear in the budget. Only the outgoing money appeared and the incoming, offsetting payments did not appear.

The trust fund came to our thoughts as a device for financing which would cause the reader to think of money flowing in as well as flowing out.

We are not criticizing the budget writers in HUD. The program they were operating required them to prepare their budgets in this way.

Role of the Federal Government in Administration

As administrators of the Trust Fund for Housing for the Elderly will want to be sure that they are loaning money to a safe credit risk, they will need an administrative staff adequate to check the applications for loans.

As the loans, both principal and interest, are to be paid back into the Trust Fund for Housing for the Elderly, the administrators of the Fund will need a staff to receive the money, deposit it and make appropriate records.

As it is to be expected that there will be instances where the borrower does not pay on time, the administrators must have a staff able to deal with the situation.

In addition to performing functions in the process of lending and collecting money, administrators at the federal level will need a staff which will work in the field of public relations. As information about the program must be the same throughout the United States, publicity must be prepared at one place in the United States -- in Washington, D.C.

In order to achieve the purposes of the program, guidelines and standards must be developed. To make sure that no one takes unfair advantage, takes money without giving a fair return, rules must be formulated.

To make sure that buildings are located at as good a site as is available, guidelines must be determined at a national office.

That construction meets the needs and is safe, durable, and pleasing to the eye, standards must be prepared at a national office and made applicable throughout the country.

As the cost of the building erected for housing directly affects the rents to be charged, the Federal administration should establish standards and guidelines which limit the prices paid for land, fees paid for services of architects, engineers, consultants, and total costs of construction.

Administration at the Local Level

The program can be administered at the local level in the various counties and cities by county or city departments, such as the Department of Human Resources, or by a quasi-governmental agency such as the Revenue Authority in Montgomery County, Maryland, or by a non-profit organization such as a church, or fraternal organization, or by a chapter of a national organization of elderly people such as the National Association of Retired Federal Employees.

It should also be possible for a governmental department or agency and a non-profit organization to work together and share administrative functions.

We believe that a profit making organization should not be permitted to participate in the financing or administration of a housing project financed by the Trust Fund for Housing of the Elderly.

In a situation where responsibilities are shared by an agency of local government and a non-profit organization, we believe that ownership of the

property should be vested in the local governmental agency. We think the governmental agency should be the borrower.

In a housing project for the elderly, counseling, recreational, educational and welfare services should be provided and if there is a group of volunteers available to perform these services, they should be asked to perform them.

As our experience leads us to believe that members of a non-profit group are most likely to recognize the need for housing in a community and are most inclined to agitate for a housing project, we think that non-profit groups of senior citizens should be invited, when there is money available for loans, to make surveys of the needs for housing of elderly people in their communities and make known the results of their surveys to their representatives in local government.

As only the administrators of the fund will know whether there is money in the fund available to be loaned, they should advise local, cooperating agencies when to solicit and when not to solicit applications for loans.

The local administration should develop plans for the project, with the aid of architects, engineers, lawyers and consultants, and should supervise construction from the beginning to completion, applying the standards and guidelines developed by the federal administration.

Kinds of Structures

We think that loans should be made to construct new buildings and rehabilitate old ones. We do not suggest any restrictions on the size, height, number of units, style of architecture so long as costs do not exceed those set forth in the guidelines prescribed by the federal administration.

Eligibility of Tenants

We propose the persons who are at least sixty-two years of age, who are alone, never having married, or being a widow or widower and have an income of not more than five thousand dollars (\$5,000) per year are eligible.

A couple, husband and wife, or two people of the same sex, related by blood and having a joint income of not more than six thousand dollars (\$6,000) per year should be eligible.

A person too young to be eligible, who is related by blood to an eligible person and whose services are needed in an important way by the eligible person may reside in the project.

It is to be expected that only those who have sufficient income to pay the rent, as well as pay other necessary expenses, will be approved as tenants; people who cannot pay the full rent will be accepted as tenants as stated in the section on financing if a department of the local government will pay the difference between what the tenant can afford and the scheduled rent of the housing project.

Only those persons who are physically able to care for themselves should be permitted to be tenants in the projects we are proposing in this statement.

The CHAIRMAN. The Honorable Robert Dole has now come in, and we will call on him at this time.

STATEMENT OF ROBERT DOLE, U.S. SENATOR FROM THE STATE OF KANSAS, ACCOMPANIED BY BECKY SINCLAIR

Senator DOLE. Thank you.

The CHAIRMAN. We are very glad to have you. Appreciate your coming.

Senator DOLE. A member of my staff, Mrs. Sinclair, has done a lot of work with the point I wish to make and is here with me this morning.

Mr. Chairman and Senator Williams and other members of the committee who may have been here or may be here later: I have had a long-standing interest in the handicapped of America and I was pleased to hear the remarks of Senator Williams with reference to the elderly because it is even more tragic when you get down to the handicapped. And I would like to summarize my statement which is in support of S. 1579 which I have introduced.

I would say that in the past, and I think I can speak with some experience because of my association and some personal knowledge, that we have tended to institutionalize those with serious handicaps. There has been a tendency to sort of put them away somewhere and then say to everyone, "We have taken care of those who have serious handicaps." And that often, of course, is not what the handicapped desire.

I find that most handicapped persons almost regardless of the handicap are very capable, intelligent, resourceful people and they have initiative and are productive citizens. And I think probably today, one of the main ambitions of most young adults or for any age for that matter is to leave the family and very often the community in which they are raised. I am talking now about not only those who are non-handicapped but those with handicaps.

It is very difficult for a handicapped adult to sort of leave an area because, in the first place, he is not certain what his future may be in another area. He has really no place to go aside from an institution or in effect some home for the elderly.

I certainly sympathize with the witness who just testified, and it is my feeling the real problem with the handicapped is housing. I can recall shortly after World War II that Congress, in its wisdom made special allowances for housing for those who had a paralysis from the neck down or the waist down. They provided special homes and special alterations in existing homes so that wheelchairs and other equipment could move about the home freely.

The CHAIRMAN. Senator Dole, for the record, I will say that you have introduced a bill, S. 1579, and I take it, it is to that you are speaking.

Senator DOLE. Yes. I indicated that earlier.

The CHAIRMAN. By the way, with reference to the statement you have just made, it was in 1947 I believe that I introduced a bill to provide special facilities and special financing for veterans who were paraplegic or confined to wheelchairs, and it has been a very successful program.

Senator DOLE. Right. I was not aware of that, so I am even more appreciative of the chairman's effort. I was in the hospital at that time, in Battle Creek, Mich., and it is of some interest also that patients at that time were Senator Hart and Senator Inouye. Somehow they got bad blood and turned out to be Democrats. [Laughter.]

But, in any event, we were all there at the same time, and it was for the most part a paraplegic center. I can say to the chairman many of my friends were beneficiaries of what I think was an outstanding program recognizing a need.

Based on that, we can project it one step or two steps, and now 26 years later apply it to the nonveteran who has an equally severe handicap, who may be married, who may have a family, and who may be confined to an area because of inadequate housing. That is more or less the thrust of my statement.

Now, I think everyone agrees that institutions are not the right answer for all handicapped people. I don't fault institutions. I think they are doing the best they can for those with very severe disabilities. But I don't believe that handicapped Americans want to be segregated, that they want to be categorized, that they want to be placed in an area with all other handicapped persons. Certainly they have something in common. But I think in the long run America will be stronger and better, and the handicapped will be better and more productive citizens if we can absorb them in the normal living process.

We have had some conversations with officials at HUD, and we are aware of the rather feeble efforts made by HUD with the reference to housing for the elderly and housing for the handicapped. There are only a few housing programs for the handicapped. I understand there are about seven designed for the elderly and handicapped. There is no specific information regarding the number of occupants. I am referring now to occupants who have a severe disability. I think you would find they were very, very few.

I think even in those seven projects the great majority are elderly. Of course, they need proper housing too, and I am not here to denigrate that. But I am here to make a case for another group that I think has been neglected in this area.

I would guess that, yes, when you get older there are certain normal debilitating factors that may bring about some disabilities, but I think if we boil it down we would find the majority of the housing projects are actually housing for the elderly.

The lack of information we have had from HUD is enough to suggest that really nothing is being done for the handicapped. There has been little thought and little energy in the area of housing for the handicapped.

I don't fault only HUD for that. Perhaps I share part of the blame because I haven't been as insistent as necessary. I am certain others have been interested, as are the members of this committee, but so far we have had very little movement.

If you segregate the seriously handicapped you find that their opportunities for personal interaction with others are very limited.

On the basis of that, as the chairman has indicated, I did in April introduce S. 1579. It is a two-phased national effort to redirect our approach to housing for the handicapped. The focus is on providing alternatives to institutional living arrangements by adapting present housing to meet the needs of the severely handicapped and by assuring

future housing will be constructed with the needs of all handicapped Americans in mind.

This proposal is based on the fact that certain handicapped people require supportive services which include assistance in job placement, health care, homemaking, transportation, recreation, and other special assistance.

In view of this, my proposal would establish a grant system in the Department of Health, Education, and Welfare. Private and public organizations already supplying supportive services to the handicapped, if awarded a grant from HEW, will have the responsibility of coordinating all supportive services to meet the needs of the handicapped.

If we are going to reach this goal of deinstitutionalization, I think we must work with housing which is in existence now, but if we are to have lasting success we must assure that in the future any housing constructed, when we talk about Federal programs for housing, takes into consideration the needs of the handicapped from the start of the planning process.

If we cannot immediately impress our concerns on the entire housing industry, it is certainly possible to do so within some of the most important sectors of housing, and that is the Federal Government's Department of Housing and Urban Development.

I therefore suggest—and I am not suggesting that the bill can't be improved, or changed, expanded, or modified—that the comprehensive planning activities in HUD include consideration of the design, construction, and location of housing, transportation facilities, and other facilities and services for the purpose of insuring ease of adaptability of such facilities and services for occupancy or use by handicapped persons.

We can look at some buildings, and from an architectural standpoint they are outstanding. But if a man or a woman can't gain access to that building in a wheelchair, it may as well be in some foreign country.

I think I might add that we have a lot to do in our Nation's Capital. It is very difficult for those in wheelchairs to use the restrooms in this office building. It was difficult until about 4 months ago for anyone in a wheelchair to gain access to this office building, but there have been ramps provided. The curbing has been cut down in front of this building so that now those in wheelchairs can gain access to the front door, which, of course, they may be unable to open without some assistance, but at least they can get to the door of the Dirksen Senate Office Building by themselves without requesting help and without taking some risk of injury to themselves.

As you understand, going over a curb in a wheelchair when you're helpless almost to start with can be a rather frightening experience and also can be physically damaging.

In any event, we must understand that we have a great number of severely handicapped Americans. We must make some provisions particularly with reference to HUD with federally financed programs that we set aside some areas in housing developments for those with handicaps.

Just as a home remodeling project is many times more difficult and more expensive after the house is built, it just seems sensible to me that certain provisions and accommodations for the handicapped can

be far more easily provided if they are built into structures from the ground up.

Doors must be widened for easy access. Bathrooms must be specially equipped, as must the kitchens be specially equipped. And there are many other things that we can do. I believe the best place to begin is in the Federal Government, with the Department of Housing and Urban Development.

Mine is a modest proposal calling for \$1 million for the first year. The second and third years hopefully there will be some momentum, more and more interest not only on the part of those of us who have a responsibility but on the part of those who serve the handicapped in America such as voluntary nonprofit organizations. Then we would raise it to \$1.5 million in the second year and \$2 million thereafter.

I know we can all come and say that \$4.5 million is not a lot of money. Certainly the two gentlemen that I am speaking to have done a great deal for the handicapped, millions and millions of dollars, and for that, of course, we are all grateful. If we want to provide residential accommodations, if we want these severely handicapped Americans to become a part of the community, an integral part of the community, then it is a wise and prudent investment.

I would just conclude by saying that I think the problem of housing and transportation and the medical problems all tie together.

When I first came to the Senate I invited everyone I could find who dealt with handicaps, whether it be kidneys, heart, or arthritis, or cerebral palsy, and we all got together for a luncheon meeting. I found, much to my surprise, that many of these organizations didn't communicate with one another. They each had their own constituency.

One had the kidney constituency. One had the heart constituency. One had the arthritic constituency.

We have to look at the overall problem of the handicapped, and that's why I believe that some effort in HUD with the stimulus from this Congress would be most helpful.

I have nothing further to say unless there are questions.

The CHAIRMAN. Thank you, Senator Dole. I think both your bill and your testimony are very challenging.

As a matter of fact, it seems for most of the handicapped persons the added expense would not be too great providing ramps and wider doors and handrails in the bathrooms and things of that kind. Lots of times that would be just about the need.

Let me ask you this. What about those suffering from some kind of mental disability? Would there be any room in this program to help them? I am not talking about a person that is absolutely insane but who may have a mental incapacity, perhaps a nervous condition, things of that kind.

Senator DOLE. Yes. I didn't mean to limit it to strictly physical impairment or physical—

The CHAIRMAN. No, I was just asking more for curiosity than anything else. In other words, you would seek to provide a program that could be—I suppose we would leave it largely to the Secretary of HEW. And you do provide for a study, do you not?

Senator DOLE. Yes.

The CHAIRMAN. And they would be part of that study, I should think.

Senator DOLE. Right; I would think so. Of course, the obvious cases are those in wheelchairs and those that are amputees or those with other severe disabilities. But I can't foresee any restraint on any other disability.

Perhaps it needs to be even less in those cases where they can use their arms and legs and have their other facilities and their senses, but certainly it is within the contemplation or should be included in what I am attempting to do.

The CHAIRMAN. Let me ask just one more question. Since so many of the handicaps that we note and recognize came out of war service, and of course we were in World War II along with so many of the European countries, do you know of any such program in any of those countries?

Senator DOLE. I don't know of any such program.

The CHAIRMAN. That would give us some guidance?

Senator DOLE. No; do you know of any Ms. Sinclair?

Ms. SINCLAIR. Yes, one country that is outstanding is Sweden.

The CHAIRMAN. Sweden did you say?

Ms. SINCLAIR. Yes, they have an advance program. But I suppose in their economic system they are more able to control their situation better than we could at this point.

Some studies have come in from this country on the kinds of housing they have and they have proven to be very feasible programs and have served the handicapped very well.

The CHAIRMAN. Thank you.

Senator WILLIAMS.

Senator WILLIAMS. In that connection, Mr. Chairman, I have had occasion to visit housing that was established by a pension fund in France. It was, well, comparable to our labor union here. And they had the most remarkable rehabilitation facility within this elderly housing sponsored by a pension fund. Some of the facilities, equipment I had never see before.

This is for victims of stroke and other physical disabilities. I think we can learn a lot.

Are you suggesting we take our committee abroad to observe this?
[Laughter.]

The CHAIRMAN. Believe it or not, we did that one time.

Senator WILLIAMS. I can't believe it. Not in my time. [Laughter.]

The CHAIRMAN. In 1949 we went abroad. And, by the way, we visited the Scandinavian countries and Britain, and France, and Belgium, and so forth. I was amazed at the advanced programs that those countries have generally, and particularly in Sweden.

I shall never forget one day we were talking with some of the Government housing officials and bankers, and I think they allowed four mortgages. One of the mortgages ran for 100 years.

And I showed amazement. I said, "100 years?"

They said, "Well, yes. We can show you houses here that are 800 years old."

Senator WILLIAMS. Could I ask Senator Dole one question on the relationship here of the two departments that would be involved?

You ended your statement by suggesting stimulation from HUD. As I read the bill, really the early stimulation here would be HEW, with a feed of finding to HUD. Is that the way it works?

Senator DOLE. Right. Initially HEW has the grant system which will approve the grants to public and private organizations. HEW is the initial stimulus, and the organizations will provide the supportive services.

HEW would probably have overall responsibility for directing the program, but in the final analysis, of course, it must be HUD which provides the facilities.

I don't know how they would split the jurisdiction, but HEW has the primary responsibility for the handicapped. HUD has the responsibility to at least integrate some of these special accommodations in their general housing programs.

Senator WILLIAMS. Thank you. Excellent.

The CHAIRMAN. By the way, Senator Williams, referring to that 1949 visit that the Housing Subcommittee took, that was made for the purpose of studying cooperative housing. When we came back, in 1950 we offered a rather comprehensive cooperative housing bill. It became apparent in the Senate—in fact, I think on test vote we did lose by about three votes.

Then I offered a substitute for the bill which was enacted into law and became section 213 providing cooperative housing. So we did get something out of that. It has been a very good program too.

Thank you very much, Senator Dole.

Senator DOLE. Mr. Chairman, I ask permission that my full statement be made a part of the record and also, if satisfactory, a copy of the bill. I would also ask that several statements and others supporting S. 1579 be included in the record.

[Senate bill 1579 is reprinted at p. 2476.]

The CHAIRMAN. That will be done. Thank you very much.

Senator DOLE. Thank you, Mr. Chairman and Senator Williams. [The statement and additional information follows:]

STATEMENT OF ROBERT DOLE, U.S. SENATOR FROM THE STATE OF KANSAS

HOUSING OPPORTUNITIES FOR THE HANDICAPPED

It is my pleasure to appear before the subcommittee in support of legislation to provide expanded housing opportunities for the handicapped. Most often severely handicapped people are sent to institutions for their entire lives. As most people want the opportunity to choose where they live, I feel there is a substantial need to include the handicapped in plans for future housing projects.

It is sometimes said that for the handicapped person, living in an institution is the least desirable of a number of alternatives, and that living with the family and in a community is to be preferred.

Today one of the main ambitions of most young adults is to leave the family and very often the community in which they were raised. This is possible for a nonhandicapped young adult, but a handicapped young adult may also have the same ambition, but have no place to go aside from an institution or a home for the elderly.

The choice of housing has always been a problem to the handicapped, for a variety of reasons relating to their unique physical, medical and financial requirements, their living accommodations frequently must conform to special needs. Doorways may have to be widened to allow easy passage on crutches or in wheelchairs. Elevators and ramps may be required, and handrails, lifting devices, and grip-bars may have to be installed. Appliances, fixtures, and floor plans frequently must be modified. Altogether, the presence of these accommodations can mean the difference between institutionalization and life as a part of the so-called normal community. And as the severity of an individual's handicap or group of handicaps increases, so does the likelihood that this individual will be unable to escape life in an institution.

It should not be assumed that living in the community will necessarily provide the best life for a handicapped person. Living in an institution can in some circumstances be far more desirable, if we consider present living alternatives. But when a handicapped person enters an institution, he enters a world which he will not be able to structure. It is a world which is operated and organized by a staff rather than by the handicapped people living there. The staff of institutions have products to work on. These products are people, and there is a very real danger that people in institutions may assume characteristics of inanimate objects and be treated as such. If a person is treated as an object, he loses his personal identity.

The vast majority of institutions for disabled people are so constructed that a close personal relationship with another resident is extremely difficult. In most institutions privacy is almost impossible.

Institutions are not the right answer to the housing needs of a great many handicapped people. With this realization being shared by a growing number of people, the trend is leading toward deinstitutionalization.

The Department of Housing and Urban Development has established housing projects for the elderly and handicapped. I have made inquiries to HUD regarding available housing programs for the handicapped and the response I received indicated there are few housing programs for the handicapped. I was given vague information on seven housing projects designed for the elderly and handicapped, and there was no specific information regarding the number of occupants, age of occupants, or the disabilities of the occupants housed in these seven projects. The elderly person with a hearing, visual or other varying degree of physical handicaps, was classified as a handicapped person. Most certainly I would not deny the fact that age can bring about certain disabilities. An elderly person who has lost his sight or his hearing, and maybe needs the aid of a cane or wheelchair, faces some of the same difficulties of a young, disabled individual. However, the young adult who is severely disabled has many special problems unique to those of the elderly, but cannot be held in the classification of elderly. It appears that the majority of handicapped housed in HUD projects are actually the elderly. The lack of information received is enough to suggest that not much, if anything, is being done in housing for the handicapped.

Little thought and energy, and few resources have been dedicated to deinstitutionalizing the handicapped and placing them physically in the environment of the communities to which they belong.

The handicapped person, segregated from his fellow citizens, finds his opportunities for personal interaction with others limited.

In April I proposed a two-phase national effort to redirect our approach to housing for the handicapped in America. My proposal focuses on providing alternatives to institutional living arrangements by adapting present housing to meet the needs of the severely handicapped and by assuring that future housing will be constructed with the needs of all handicapped Americans in mind.

This proposal is based on the fact that certain handicapped people require supportive services which include assistance in job placement, health care, home economics, transportation, recreation and other special assistance. In view of this, my proposal would establish a grant system in the Department of Health, Education and Welfare. Private and public organizations already supplying supportive services to the handicapped, if awarded a grant from HEW, will have the responsibility of coordinating all supportive services to meet the needs of the handicapped.

If the goal of deinstitutionalization is to be achieved, we must work with housing which is in existence now. But if we are to have lasting success, we must assure that in the housing which will be constructed in the future, the needs of the handicapped are taken into consideration from the start of the planning process. If we cannot immediately impress our concerns on the entire housing industry, it is certainly possible to do so within one of the most important sectors of housing—the Federal Government's Department of Housing and Urban Development.

I therefore suggest that the comprehensive planning activities in HUD include consideration of the design, construction and location of housing, transportation facilities, and other facilities and services for the purpose of ensuring ease of adaptability of such facilities and services for occupancy or use by handicapped persons.

Architecturally a building can be outstanding, but if it is not adaptable to an individual's needs, it will be non-functional. Considering that certain severely handicapped people require special services, housing authorities must realize and

understand that housing structures must be adapted to and coordinated with necessary supportive services. We can no longer just build buildings and have them stand idle because a supportive service system was not incorporated into the initial plans.

Just as a home remodeling project is many times more difficult and more expensive after a house is built, the cost of building will be more economical if modifications are included in the original plans. Thus, if doorways were to be built wide enough for a wheelchair to pass through, and easy connections made for converting sinks, lavatories, toilets, and bathtubs or showers, plans for use by the handicapped could be made more economically.

I believe the best place to start in the Federal Government is in the department which is concerned with the homes and communities in which we all will live in the future. With the expertise and technical resources at its command, the Department of Housing and Urban Development could make great strides in a short time, and produce plans with necessary modifications for all housing projects.

My proposal would be supported by reasonable but significant funding authorizations. For the first year, \$1 million is authorized, but for the second and third years—in the expectation that a certain momentum will be generated—\$1.5 and \$2 million authorizations are provided.

Certainly, \$4.5 million—which can lead to vastly improved and more rewarding residential accommodations for the handicapped in America—is a wise and prudent investment.

Those of us who are concerned with the needs of the disabled are very fortunate indeed, because of the opportunities for giving and caring, and of developing our potential for assisting them. The problem of housing is, along with medical and transportation considerations, as critical a subject for the handicapped as any I know. We must rise to meet our responsibilities to those citizens who are afflicted by various physical and mental disabilities. The Department of Housing and Urban Development has the resources we need to initiate good and sound housing programs for the handicapped. I hope this Department will focus its energy in all future planning to meet housing needs of the handicapped.

CONTINUING CARE, INC.,
Wichita, Kans., July 24, 1973.

Hon. BOB DOLE,
U.S. Senator,
Washington, D.C.

DEAR SENATOR DOLE: Senate Bill 1579 will be an excellent opportunity for physically handicapped persons to obtain a new hope from a society and an environment which presently inhibits their individual mobility.

Continuing Care, Inc. has provided Community Residential Services to the mentally handicapped and persons with minor physical handicaps the past five years. Our present facilities do not allow for persons in wheel chairs and those needing other supportive devices in walking. Therefore, we have not been able to serve this population to its full potential. Senate Bill 1579 would allow Programs for the Handicapped to make modifications to their present physical structures and it would also provide funds for additional staff in caring for the more severely physically handicapped.

I fully support Senate Bill 1579 and I would be available for any help which you might need on implementation of this bill.

Sincerely,

ROBERT M. POWERS,
Executive Director.

KANSAS ELKS TRAINING CENTER,
Wichita, Kans., July 26, 1973.

Hon. BOB DOLE,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR DOLE: I want to respond to your proposed bill providing housing opportunities for the handicapped.

As a comprehensive rehabilitation center providing not only vocational evaluation, training, and job placement opportunities, but also reacting and meeting total handicapped citizens' needs, we have for some time been involved in set-

ting up foster homes for handicapped clients and workers. Since 1968 I have also served on the Board of Directors of Continuing Care, Inc., Wichita, which provides three large group homes of sheltered living nature for primarily retarded clients who are either in training or who are working, but still require supervision of their time and money. Also in Continuing Care, we have two large group homes in Salina that are working concurrently with the Occupational Center of Central Kansas in that community.

The needs for providing housing for the handicapped are really overwhelming. We're just beginning to scratch the surface in the total need picture. As an agency we are still not able to cope with and provide adequate housing for the severely handicapped individual, for example the brain damaged veteran who can possibly benefit in a rehabilitation center in the community but needs special living accommodations. At this time we are not quipped to meet this need. The spastic quadriplegic cerebral palsied adult who can function in our work activity program here at the Training Center but will need highly specialized living accommodations, we are again not able to meet this need.

I would endorse in letter and intent the bill which you have outlined providing models of living arrangements for the severely handicapped adult. This certainly is a demonstration need nation-wide. Alternatives to institutionalization and the inherent dehumanization that occurs in large institutions need to be thoroughly explored, weighed, and solutions suggested.

We will be working with 300 handicapped citizens in our center this year. Of that number, 175 must have specialized housing accommodations while in training. Of those that we placed last year, 105 were placed on jobs. Three-fourths of those people will continue to need specialized, supervised housing even after employment is obtained.

I commend you for your involvement and response to this critical need for those handicapped citizens in our community who must have specialized housing in order to even begin to cash in on what remains of their productivity. Reasonable, proper and suitable housing arrangements in the community will round out and make them total contributing men in our community.

Yours sincerely,

DEAN B. SETTLE,
Executive Director.

UNITED CEREBRAL PALSY ASSOCIATIONS, INC.,

Shawnee Mission, Kans., July 26, 1973.

Hon. BOB DOLE,
*New Senate Office Building,
Washington, D.C.*

DEAR SENATOR DOLE: In support of your bill S. 1579, Housing Opportunities for the Handicapped Act, I would like to make the following comments.

In accepting the fact that an individual with a handicap has the same right as other persons to live how and where he chooses we must also accept the fact that, traditionally, we have limited his choice and created a destructive cycle that has isolated him from society.

Your bill S. 1579 would allow this trend to be reversed by enabling a disabled person to move into society and take advantage of the resources the community has to offer. This would undoubtedly enhance his independence and self-sufficiency.

Section 3 of your bill, authorizing grants to eligible sponsors to carry out demonstration programs to provide innovative independent living arrangements in a setting of existing supportive services for "severely handicapped adults" would seem to be a logical way of establishing alternative patterns of housing for the disabled. Coordination of agencies, both public and private, in such an endeavor would undoubtedly encourage its success.

The establishment of a "sponsor advisory council", Section 5, to include handicapped persons would provide opportunities for social and developmental growth and decision making for the developmentally disabled who have had no choice as to how, where, and with whom they live.

It would also seem logical that the Department of Health, Education and Welfare and the Department of Housing and Urban Development could together build, or adapt, living arrangements so that people with handicaps could have choices as others do. Section 7 of the bill, providing for an amendment to the Housing Act of 1954 to include "consideration of the design, construction and location of housing, transportation facilities and other facilities and services

for the purpose of ensuring ease of adaptability of such facilities and services for occupancy or use by handicapped persons" is a vital component of the bill.

We would hope that millions of Americans could lead totally new and enriched lives and have the right to be assured the means of achieving the same dignity, respect, and opportunity accorded all men in the Constitution of the United States by enactment of this bill.

The appropriations to be authorized in Section 8 of the bill would seem to be very minimal to begin an approach to this problem.

When handicapped persons would be integrated into the community, rather than into an institution, we would hope that the public would accept even the most severely disabled adult as a person with the same hope and aspirations for first class citizenship as others and thereby eliminate the constraints of oversight, apathy and discrimination that have been placed on him.

Current legislation is simply not adequate to protect the rights of the individual severely handicapped by Cerebral Palsy and this group has suffered undue hardships and limitations. We applaud your efforts to alleviate the constraints that have relegated the severely disabled to isolation and immobility and want you to know that we support your efforts wholeheartedly.

With best wishes,

Sincerely,

MARGARET O. MURRAY,
Executive Vice-President.

UNITED CEREBRAL PALSY OF KANSAS,
Wichita, Kans., July 24, 1973.

Hon. BOB DOLE,
*New Senate Office Building,
Washington, D.C.*

DEAR SENATOR DOLE: I have read with a great deal of interest Senate Bill 1579, "Models of Living Arrangements for Severely Handicapped Adults" that was authored by you to provide housing for the handicapped.

As you know, Senator, I have been in the habilitation field for some 23 years with a primary interest in the cerebral palsied. My first exposure was as a speech pathologist and clinical audiologist at the Institute of Logopedics in Wichita for some 11 years. The balance of the 23 years have been spent as Director of United Cerebral Palsy of Kansas.

The purpose of my reviewing this brief history is the fact that many of the young children that I formerly worked with clinically at the Institute of Logopedics are now young adults who have been taken up through the traditional hard core therapy route which included thousands of hours of speech therapy, occupational therapy, physical therapy and special education. We have expended approximately \$60,000 per client on therapy programs to bring this population up to their maximal level of performance. Unfortunately, in spite of all of these efforts, today we find a number of adults that have come up through this program to be highly frustrated and emotional human beings because as professionals and as a society we have failed to deliver a lifestyle that is meaningful to these individuals. We have had a myopic vision of concentration on one-third of their lifestyle and have done a reasonably good job of ignoring the remaining two-thirds. As you know, we do have excellent sheltered workshops that are attempting to fill part of this void. However, many of the adult and young adult cerebral palsied are of normal or superior intelligence and need to expand their usefulness in life beyond the workshop environment.

When we piece this puzzle together it becomes unavoidably clear that housing has to be a forerunner to any type of meaningful employment of the heavily handicapped.

I would like to call your attention to the "Focus" program in Denmark which supports this view. After housing was provided for the heavily handicapped in Denmark, employment rose over a two-year period from 20% to 80% for the heavily handicapped.

Senator, you have worked with us in developing a comprehensive competitive employment program for the physically handicapped, a vital research project that is currently underway at the College of Engineering at Wichita State University. There are a number of dedicated business leaders in the community of Wichita supporting the work of this project and, more importantly, rolling up their sleeves to complement this research by providing meaningful jobs for the heavily handicapped.

The question that inevitably arises by the cerebral palsied adults, their families and the business community is where are these individuals going to live? Indeed, how can their work lifestyle be established when a dark cloud of uncertainty hangs over the most fundamental issue of where are these people going to live? How can employment become a reality when an individual is housed in a nursing home or perhaps an institution? How can it become a reality when the family constellation is faced with the fact that mother and father are no longer physically or emotionally capable of handling the young adult at home? As you know, Senator, in Kansas we spend an average of \$600,000 for institutional care over a normal lifetime of the handicapped individual. When we look at the dollars and set aside the normal and humanitarian aspects, I cannot imagine how it can be any more costly to turn this money into a meaningful program that can develop residential and employment of the heavily handicapped where this individual can cost-share in his existence and make a contribution far beyond the restricted options that currently exist for this population.

Enclosed please find copies of letters from young cerebral palsied adults that support the need for Senate Bill 1579.

May I again thank you for your untiring efforts on behalf of the handicapped. Sincerely,

JACK JONAS,
Executive Director.

TOPEKA, KANS., *February 20, 1973.*

Mr. JACK JONAS,
*Executive Director, United Cerebral Palsy of Kansas,
Wichita, Kans.*

DEAR MR. JONAS: Your letter of February 8th, has just reached us through the Capper Foundation in Topeka, with the request that we reply concerning it's application to our daughter, Nancy.

Permanent residential facilities for the adult cerebral palsied is long overdue. In our case it would be the answer to twenty years of unsuccessful search for a suitable environment for our daughter.

No one, except parents who experience it, can know what it means to make a sudden transition from a normal, healthy child, to one who must be permanently crippled the rest of their life. The second shock comes when doctors advise that your child would be better off in an environment other than the home. You love your daughter and want to take care of her, however, after several years of frustration, we were forced to agree. The third blow is when the Doctors say, "this will have nothing to do with Nancy's longevity—plan on her living a normal life span, which according to the law of averages will mean that she will outlive you many, many years."

Then, the real frustrations began. We wrote and investigated every possible facility we could see or hear about. All were either not appropriate or too expensive. In the meantime, Nancy was alternately at home or in public institutions. Public institutions have real problems. However, at their best, their climates are no place for a person who only needs loving care in an atmosphere of constructive therapy. Likewise nursing homes are in short supply and have their problems. They are not intended for the young adult, for their patients live in daily surroundings of infirmity, senility and death. This is most depressing for one like our Nancy. Probably, to sum up our frustration was the direct question we put to a highly qualified professional in this field. We asked, "If this was your daughter, what would you do?" His answer was, "I'd be doing the same thing you are."

My wife and I are each 63 years of age. At the end of 1974 we will be retiring. Normally, Nancy, who will soon be 34 years old, will have many years ahead of her. The thought that haunts us each day is, "Will she be well cared for when we are no longer here?"

While Nancy is our main concern, we know that there are many more in Kansas who have a similar problem. Our thoughts and prayers would also be in their behalf in hoping for such a facility as you suggest. One where, in addition to loving care and cheerful living conditions, there would be available perhaps a "sheltered workshop", where the resident can perform according to their abilities in return for a "token income." Nancy needs gainful work to do and the sense of accomplishment from doing it. In other words, she needs and wants to feel "needed."

Here then is a brief history of Nancy: Until she was stricken so suddenly she was a healthy, rugged child: an excellent swimmer, much sought-after as a member of girls' baseball teams an accomplished pianist, an excellent student who loved her schoolwork. In her ninth grade year (1953) without warning, she fell into the aisle in convulsions. Diagnosis: "scar tissue has caused permanent brain damage." This was later changed to "possible brain tumor." After months of hospitalization the Doctors were still unable to pinpoint the location of the tumor, and we were referred to the Montreal Neurological Institute, Montreal, Canada and further tests under the care of Drs. Wilder Penfield and Theodore Rasmussen. In May of 1956 they performed radical brain surgery, finding no tumor. Diagnosis: "degenerative brain disease—90% of the then diseased area removed." However, despite their optimistic predictions on the improbability of any further convulsions, she did continue to have them for several years. We are happy to report however, that she has had none whatsoever for several years now. Doctors have said, "they have a way of burning themselves out when the patient has been attacked so young."

For several years we had Nancy in K.N.I. at the urging of the Neurologist on the case. During this period she gradually became mostly paralyzed on the right side, due to damage to the nerve ends in the course of the surgery. Her speech center was involved also and has never recovered. She now is said to have aphasia and struggles desperately for the words to express the thoughts her agile mind is constantly producing. It is heart-breaking to observe when there is no help we can provide. Months of speech-therapy have had no apparent effect. K.N.I. finally told us we must remove Nancy from there as she definitely did not belong or should be isolated among the mentally retarded. We could not have agreed more, but to what?

Eventually we took her to Hadley Rehabilitation Center at Hays after hearing about the work being done by their Dr. George. She spent 14 happy months there in intensive therapy and accomplished what we thought to be a miracle. Dr. George got her out of the wheel-chair and able to walk alone, with only a cane. He was unable to make any improvement in her hand or arm. He finally recommended that we bring her back to Topeka, "but not into the sole care of her Mother." He suggested a nursing home With Daily Therapy, necessary he said, "to maintain her at this level." We placed her in a new one just opening amid promises of a full-time therapist and daily programming for both body and mind. To my knowledge in all these four or five years she has never had one hour's therapy there. Consequently she has lost much of what Dr. George gained and now can barely walk a short distance supported by two strong adults. But even more important than this disappointment, if that is possible, is the sadness which surrounds her. Nancy is very kind-hearted and emotional and quickly develops deep devotion to her roommates. The sudden loss just recently of her beloved "Grandma" has been devastating on her. We are therefore desperate to remove her from such ever-present eventualities.

Our prayers go with this letter, that you may accomplish what we alone cannot do. Please feel free to call on us in any way we can help however. We must have Nancy happily situated among her peers, at the earliest possible date.

Thank you for the work you are doing and until we hear further.

Sincerely yours,

C. S. HETTINGER.

July 27, 1973.

DEAR SENATOR DOLE: At the University of Kansas, we have learned that architectural barriers in facilities in which we live and work do not just impede the mobility or hamper the efficiency of persons with disabilities, but place constraints on all persons to deal effectively with their environments. Last summer several ramped curb cuts were installed on campus specifically to aid persons in wheel-chairs. However, when the student body was randomly surveyed as to the function of the ramped curb cuts, over 80% of the sample expressed the belief that the cuts were made to facilitate the mobility of bicycles on campus. Similarly, when service and delivery personnel were interviewed, they expressed appreciation for these changes which they felt were introduced to make their jobs easier.

In a parallel fashion, improving the living accommodations for persons with disabilities can also have important ramifications for the housing everyone occupies, especially when one realizes that all families at one time or another must cope with some type of temporary or permanent disability.

Increasing door clearance in home to accommodate wheelchairs and other ambulatory aids would also facilitate service and delivery people who are con-

stantly plagued by the problems of moving furniture and appliances through inadequate door spaces. Ramping entrances which would increase the mobility of persons in wheelchairs and the elderly would also promote safety by eliminating the hazards of negotiating steps. Installing grab bars in bath tubs and showers to accommodate persons with disabilities would also serve to decrease the frequency of all accidents caused by these slippery surfaces. Furthermore, increasing efficiency in the kitchen for persons with disabilities by decreasing the amount of movement necessary to accomplish various tasks will benefit all persons by enhancing the effectiveness of their utilization of this specialized environment.

If the past is a good predictor of the future, the serendipitous effects of research on problems of persons with disabilities could again have important implications for all people. One of the more dramatic examples of innovations to facilitate persons with disabilities was the installation of the rear view mirror in automobiles to permit persons with hearing impediments to visually detect what others could hear. It soon became obvious that this piece of equipment originally designed to aid persons with disabilities could be an important safety feature for utilization by all persons and thus, all automobiles are required to be equipped with rear view mirrors.

In the past persons with disabilities and their families considered institutional living arrangements a reasonable alternative to residence in a private setting, since no other alternatives in living accommodations seemed viable. However, institutional housing has promoted the segregation of persons with disabilities from the mainstream of society to the detriment of all concerned. This isolationism has promoted a philosophy which espouses the pacification rather than the rehabilitation of persons with disabilities. New awareness among persons with disabilities to maximize their potentials and to focus their energies toward self-sufficiency and independent living should be encouraged and incorporated into government sponsored programs, such as Housing for the Handicapped. Persons with disabilities should not be limited to one alternative for living arrangements. If regular housing cannot be modified, a few houses in each development should be constructed to provide the necessary accommodations for persons with disabilities. The ultimate solution, however, lies in constructing barrier-free housing facilities which will enhance the efficiency of all persons in their living environments, since architectural barriers are not just the problems of people in wheelchairs, they are "people problems."

Sincerely,

ROBERT M. HARRIS,

Graduate Student,

Somatopsychology Rehabilitation, University of Kansas.

STATE DEPARTMENT OF SOCIAL WELFARE,

STATE OFFICE BUILDING,

Topcka, Kans., July 27, 1973.

Hon. ROBERT DOLE,
Dirksen Senate Office Building,
Washington, D.C.

DEAR SENATOR DOLE: As state Coordinator of Development Disabilities Services in the state of Kansas, I am pleased to have the opportunity to express before this subcommittee the residential needs of the developmentally disabled.

We first of all strongly support the intent of Senator Dole's Bill (SB 1579) as this would be an important initial step for the development of a comprehensive integrated housing system within our communities. I say that based on the fact that in the state of Kansas we have been attempting to meet the President's objective of de-institutionalization for the past two to three years. What we have discovered is that there are very few residential services of an appropriate nature available when our institutional staff and community staff begin their placement procedures. We have many times had to make unnecessary placements into nursing homes or intermediate care facilities when an adult group home, hostel, boarding home, etc., would have been more adequate.

There is a tremendous need for a variety residential alternatives if we are to meet the specific need of each adult developmentally disabled. We must not be forced to create in our communities one housing system as the only alternative for the adult developmentally disabled. We must have the flexibility of designing, building, sub-contracting, purchasing, leasing, renting, etc. that are made avail-

able to other citizens. These community residential facilities must meet appropriate fire and safety standards but they must not be subject to standards that were designed for the safety of non-ambulatory individuals or medically dependent individuals who require a skilled nursing facility. These safety standards must be flexible to meet the variety of residential situations needed.

It is very heartening to know of the interest of Congress in the residential needs for these citizens. It is frustrating in planning for community services within the state to social, training, treatment and other necessary support services available when there is not an adequate place to live.

Your help in enabling the various federal agencies such as HUD, and HEW working together and planning together in designing appropriate community residential services is extremely timely.

Sincerely,

DENNIS E. POPP,
Coordinator, Developmental Disabilities Services.

STATEMENT BY EDWIN B. MINTER, EXECUTIVE DIRECTOR, UNITED CEREBRAL PALSY
OF GREATER KANSAS CITY

Among the deliverers of service to the handicapped there is indeed the accepted fact that deinstitutionalization is the most sensible approach in providing a life style of dignity and preservation which the handicapped have as a basic right. Deinstitutionalization provides a solution to one of the major concerns of the handicapped and their families, as well as a sensible economic approach.

In our area institutional costs average about \$400 per month per client. In the Kansas City region there are approximately 90 foster homes and other special living arrangements for approximately 400 children with an average monthly cost of slightly over \$200. This speaks to the economy of deinstitutionalization.

Today the urban area naturally represents the hub of diagnostic, evaluative and other supportive services. We know the further one gets from that program hub the more pronounced the tendency to colonize groups of disabled. This concept compounds itself because of the lack of transportation services. Incidentally, our agency now considers transportation to be a major component in any program for the disabled.

The ominous concern on the part of many elder parents for their middle-aged handicapped sons and daughters, is who is going to care for this individual after their death. Senate Bill 1579 provides this model for this kind of living arrangement as an answer to this problem.

I have no doubt the voluntary sector of our nation would and could through this legislation be able to demonstrate conclusively the value of such a program.

As we daily develop more sophisticated methods of programs, both life saving and life giving for our young developmentally disabled, we add to the growing list of adult handicapped Americans who will require and deserve the best obtainable in living arrangements.

The CHAIRMAN. The next witness will be Mr. John B. Martin, consultant to the American Association of Retired Persons and the National Retired Teachers' Association, also former Commissioner on Aging.

He is accompanied by Mr. Peter Hughes, legislative representative, and Ms. Harriet Miller, consultant on housing.

We are glad to have all three of you with us.

STATEMENT OF JOHN B. MARTIN, CONSULTANT TO THE AMERICAN ASSOCIATION OF RETIRED PERSONS AND THE NATIONAL RETIRED TEACHERS' ASSOCIATION, AND FORMER COMMISSIONER ON AGING; ACCOMPANIED BY PETER W. HUGHES, LEGISLATIVE REPRESENTATIVE, AND HARRIET MILLER, CONSULTANT ON HOUSING

Mr. MARTIN. Thank you very much.

The CHAIRMAN. I will state again your prepared statement will be printed in the record or you can read it. You proceed as you see fit.

Mr. MARTIN. Thank you, sir.

I am John Martin, former Commissioner on Aging, and presently consultant to the National Retired Teachers' Association and the American Association of Retired Persons. These affiliated, nonprofit organizations represent a combined membership of over 5,400,000 older Americans.

I am here this morning with Ms. Harriet Miller, consultant to the association on housing, and Mr. Peter Hughes, who is a member of our legislative staff.

I appeared before this committee not too long ago, Mr. Chairman, to protest the moratorium on housing which our associations feel has done harm to the housing picture and created problems for our older people.

We have also met with HUD officials, and we have expressed the absolute importance of including adequate provision for elderly housing in the program which they are developing for announcement on September 7.

I am here today to comment on four bills which are the subject of this hearing—demonstration loan program for the elderly, the Housing Security Act of 1973, the intermediate housing for the elderly and handicapped bill, and the extension of section 202 housing for the elderly and handicapped program—all of which Senator Williams has introduced and which we find of great interest.

The National Retired Teachers Association and the American Association of Retired Persons are acutely aware of the housing needs of older persons and of the fact that our elderly citizens do not have time to wait for decent affordable housing. Their time is limited. We cannot put a "hold" on growing old and on their special housing needs. Many of them need housing now and not years from now.

For that reason, I won't go into the statistics of need, because I think the committee is well aware of those, but what our associations would like to see in some action in this field and action in the immediate future.

First as to S. 2179, the demonstration loan program for the elderly, we believe that the mechanism that would be established by S. 2179 has the potential for providing a response to the specialized needs of our older citizens. S. 2179 combines desirable features of section 202 of the 1959 Housing Act with a financing mechanism that should save money for the Government and, in turn, its citizen-taxpayers. Consequently, this method holds the potential ultimately for developing the quantity of housing needed.

Although our associations have consistently supported the section 202 direct loan program, we recognize and understand the opposition to it that arises from its heavy impact on the annual Federal budget.

We recognize the National Elderly Housing Loan Fund is designed to remove this objection. We believe it does.

By creating a "revolving fund" with the potential for growth, this legislation can be expected to provide an appropriate mechanism for financing the needed housing if the money market behaves as it has in the recent past.

We believe the demonstration approach which Senator Williams has taken in this bill is sound and in the best interest of the elderly and of our citizenry in general.

While we believe there are savings inherent in the direct loan program of section 202 and thus favor it over section 236, our enthusiasm for section 202 derives mainly from the fact that it was a special program for the elderly and handicapped. It was targeted to meet their special living environment needs, and it expressed a governmental commitment to meet those needs. The administration of the program was uncomplicated and flexible, innovations were encouraged, and the needs of the constituency being served were kept uppermost in mind.

We believe therefore that S. 2179 holds similar promise for addressing the special living environment of the elderly. It is not a general purpose housing program; it is a demonstration program for the elderly and handicapped. It makes a philosophical and financial commitment to the elderly and their special needs, and we support it strongly.

S. 2180 deals with the Housing Security Act of 1973.

I regret that our crime protection program specialist, George Sunderland, is unable to be here today, and we would like for that reason to include in the record a statement from him as to the program which we have been developing.

This year our associations undertook a major study of crime prevention techniques. In addition to our exhaustive review of the literature, we contacted experts in every phase of the crime prevention and the law enforcement field. That included police and law enforcement agencies at the Federal, State and local levels, State criminal justice planning commissions, alarm systems and security hardware manufacturers, universities and independent research organizations.

With the information developed through this research, we prepared a crime prevention program for our membership. Through this program, we believe the incidence and effects of crimes against the older person can be reduced. The associations' prevention program covers street crimes, burglary, fraud-bunco and community-police relations.

The program has been used on a citywide basis in Kansas City and in Seattle. It has brought cooperation from mayors and police chiefs of those cities, and we believe that much can be done about this by education.

Parts of any sound program, however, of security are going to require funds, and S. 2180 addresses this particular need.

We are cooperating also with HUD in the conference which it is planning to hold in September to explore all possible avenues of attack on the security problem.

We are convinced that proper design, education, and crime prevention techniques and adequately trained personnel can, with tenant cooperation, provide a safe environment for the elderly.

With your permission, we will file such a supplementary statement outlining the work that we have been doing in this field.

The CHAIRMAN. We will be very glad to have that.

Mr. MARTIN. S. 2181 deals with Intermediate Housing for the Elderly and Handicapped Act.

We support the concept of intermediate housing for the elderly and handicapped, and we support the concept of intermediate housing as developed in Philadelphia and the provisions of S. 2181 which are designed to encourage its availability.

Our associations believe that older persons should have a choice of living arrangements in order to meet individual requirements ranging from complete independence to total care.

Research has amply demonstrated what commonsense suggests: That is, people generally are likely to be healthier and happier in those environments which provide for maximum independence, combined with an appropriate degree of physical security.

Intermediate housing is more suitable for those persons who, while they do not require full-scale institutional care, nonetheless cannot sustain complete personal independence. Among the useful studies in this area are those by the Levinson Gerontological Policy Institute at Brandeis University and a cost-benefit analysis in the care of the elderly recently completed in England by R. Wager and published by the Institute of Municipal Treasurers.

In recognizing the usefulness of the intermediate housing concept, S. 2181 represents a step in the right direction. Focusing on a specific aspect of an urgent need, the bill offers the potential for better utilizing some existing housing for the benefit of some older people having some degree of need for supportive services. And the supportive services aspect of it, of course, is enormously important.

This bill, however, must be recognized as both a bricks and mortar approach, of course, and a supportive services program. It is a combination of the two. While incorporating a requirement that housing sponsors utilizing its provisions must provide supportive services, the bill does not provide for supplying those services. If the Philadelphia Geriatric Center's prototype project is to be replicated successfully on a nationwide scale, not only the housing itself should be used as a model, but also the kind and quality of supportive services which have distinguished the Philadelphia pilot program.

While supporting the concept of S. 2181, we urge attention to their larger need. At the very least, we believe requirements should be added for interagency cooperation by those agencies providing programs and services for older Americans.

Ideally, provision should be made for implementation of a full-service intermediate housing concept, since without incorporation of the supportive services component as an integral part of the program, the mere modification of existing housing cannot serve as an adequate response to the real and urgent need of an important segment of the older population.

We think, therefore, that some attention should be paid to the financial problem which sponsors of such housing will have.

Supportive services cannot be done cheaply, and if they are done right, they require financing. Without this assurance, the program could create more programs than it solves.

S. 2185, the fourth of these bills, is a simple extension of section 202 housing for the elderly and handicapped program.

As I mentioned before, our associations have consistently supported the section 202 program. We would like to see it reinstated and expanded.

In the section 202 program, the Government made a commitment to housing for the elderly and made it possible to meet their special needs. There has never been a section 202 failure, as has been pointed out earlier this morning. Section 202 has been free from the scandals and problems which have beset other housing programs.

Section 202 was a financially sound program that was helping to meet the needs of a deserving segment of our population. The scuttling of the program without adequate replacement was a tragedy for many of our older citizens.

We support the reinstatement and expansion of section 202 as proposed in S. 2185.

That completes our statement, Mr. Chairman, and we will be glad to answer any questions which you may have.

The CHAIRMAN. Thank you very much.

Let me say that I agree fully with you with reference to section 202, and I call attention to the fact that even though at various times it has been recommended that it be repealed and it has been subjected to misuse, we have kept it alive with legislation even when it was not being used. I think it is one of the best programs we have ever had for the purpose for which it was intended.

Mr. MARTIN. It has produced some very fine housing.

I visited many of these housing units in different parts of the country. The people who live in them, most of them, are just overjoyed at having the opportunity. Continuing the program seems to us highly desirable. It seems to us also that doing away with the program solely for an accounting reason is not a very sound reason for abandoning a good program.

The CHAIRMAN. Let me ask you this question: What nationwide information do you have about the various types of housing projects that include medical care on the premises, and including long-term medical care, in the cost of rent or ownership? Are these sound programs financially?

Mr. MARTIN. Yes.

The CHAIRMAN. Socially and medically?

Mr. MARTIN. Sound programs can certainly be developed and are in many cases developed throughout the country. They vary in how much medical care goes with the project.

But what we have found is that many people who go into a housing facility, as they grow older, want to be able to feel that they can have some medical care, perhaps not acute care, but some care where they are or relatively in the same area.

So many of the housing developments for the elderly have in more recent years developed sort of care units which are associated with them where people can spend small amounts of time if they need to.

We think this reflects a need and a desire on the part of the older people and that that kind of a development is a desirable one.

Certainly they can be economically sound. There is no doubt about that.

The CHAIRMAN. Who oversees such projects as that?

Mr. MARTIN. Well, usually the sponsor of the project. The sponsor of the project, of course, has to charge rents that would include some cost of operation of that kind.

But the sponsor, whoever it is, whatever institution it is, if it is a church or a fraternal institution, is responsible for the operation of the facility.

The CHAIRMAN. Senator Williams.

Senator WILLIAMS. No questions, but we certainly appreciate this statement, Mr. Martin, and we know in your new consulting capacity the contribution you are making.

I understand the organization of AARP has done a great deal of study on security questions of older people, Mr. Martin.

Mr. MARTIN. Yes; we have, Senator. I think you had stepped out of the room when I commented on that. But we have developed a very good crime prevention program, and it has been used now, as I commented in my testimony, in two places on a citywide basis, both in Kansas City and Seattle.

As a matter of fact, HUD sent one of its men, Morton Leeds, out to view the program in Seattle, because he is planning a conference in HUD in which he will bring in the experts on security from around the country to analyze this whole thing and, therefore, come up with some ideas that HUD can use in developing its security program.

They are conscious over there, I believe, that their housing is not going to be much use if people can't live in it without fear of crime and assault and that kind of thing.

So that I believe that Assistant Secretary Crawford is showing commendable interest in this particular problem, which is acute, as Senator Williams knows, in many parts of the country.

Senator WILLIAMS. Mr. Sunderland has been working with you in this?

Mr. MARTIN. Yes; George Sunderland has worked up the program, and it is essentially an educational program. The point that you make in your statement this morning, however, is absolutely clear and sound, and that is that no program which doesn't have some funding to it is going to be successful.

There is a certain amount of hardware that is necessary, and there is a certain amount of personnel that is necessary to make those programs go. And the security part of HUD's program has suffered severely from the fact that income of these public housing authorities has been cut down by the Brooke amendment, and so on, and they simply

haven't had in many cases enough money to fund a decent security program.

Senator WILLIAMS. And is Mr. Sunderland's paper going to be available to us?


Mr. MARTIN. Yes; we would like to submit a paper from him for inclusion in the record.

Senator WILLIAMS. When we receive that, I would like to have that as part of the record, Mr. Chairman.

The CHAIRMAN. We will be very glad to do that.

Senator WILLIAMS. Thank you.

[The information referred to follows:]



American Association of Retired Persons

National Retired Teachers Association

1225 CONNECTICUT AVENUE, N. W.

• WASHINGTON, D. C. 20036

• (202) 872-4700

PRESIDENT, NRTA
Joseph A. FitzgeraldPRESIDENT, AARP
Foster J. PrattEXECUTIVE DIRECTOR
Bernard E. Nash

August 9, 1973

Honorable John J. Sparkman
United States Senate
Washington, D. C. 20510

Dear Senator Sparkman:

As requested by Senator Williams at the hearing on S. 2180 and other Bills affecting the elderly on July 31, 1973, before the Subcommittee on Housing and Urban Affairs of the Senate Banking, Housing and Urban Affairs Committee, I am submitting the following statement relating to S. 2180 and to security generally.

Senate Bill 2180 will create an Office of Security under the Assistant Secretary for Housing Management in the Department of Housing and Urban Development. This newly-created activity will (1) make grants, (2) serve as a clearinghouse and (3) cooperate and coordinate with the Law Enforcement Assistance Administration. I can offer no objections to these proposals. However, I would like to see some consideration given to offering the National Criminal Justice Reference Service, Department of Justice, the clearinghouse function. If this will not meet the purposes of the Office of Security, then close cooperation should be established with NCJRS. NCJRS is now one of the largest sources for Criminal Justice related materials in the country. It seems highly desirable to eliminate duplication and proliferation of clearinghouse functions.

Early last year, the National Retired Teachers Association and the American Association of Retired Persons undertook a comprehensive review of our anti-crime program which is one of our 28 programs. We came to the conclusion that an educational Crime Prevention program would be most beneficial in helping older persons cope with crime.

While we recognize the serious problems existing in both the Courts and the Correctional Institutions, and while we encourage research and improvements in both these elements of the criminal justice system, we feel we can do the greatest good now--and for

older persons THE PRESENT is more important than the hopes of the next century--by placing our efforts in Crime Prevention programs.

We define Crime Prevention as the anticipation, the recognition and the appraisal of a crime risk and the initiation of action to reduce or remove this risk.

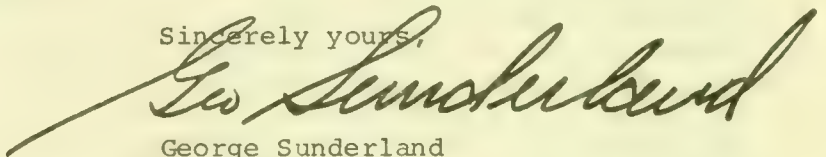
Once our course had been charted, we conducted comprehensive research and review into the science of Crime Prevention and developed a program for older persons. We have been implementing this program by a variety of methods.

In our Crime Prevention program we cover four subject areas. They are Street Crime, Residential Burglary, Criminal Fraud and Community/Police Relations. We strive to inform older persons of the simple, practical things that they can do to reduce their chances of being criminally victimized. We try to make them aware of the real dangers and we try to reduce their imagined fears. We have published 300,000 copies of a Crime Prevention booklet for free distribution.

We know that the chances of being victimized can be substantially reduced by the practical application of research done in crime-related sciences and by gathering and applying the knowledge accumulated by law enforcement officers.

Attached is a copy of our program script, which is used in one of our methods of implementing our Crime Prevention program. We also attach a copy of the report from one of our metropolitan area programs recently held in Kansas City. The attachments are for inclusion in the record if the Committee so wishes.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "George Sunderland", written in a cursive style.

George Sunderland
Program Specialist

Attachments



A public service program

National Retired Teachers Association
American Association of Retired Persons



American Association of Retired Persons
National Retired Teachers Association

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FOREWORD

The National Retired Teachers Association and the American Association of Retired Persons are endeavoring in many ways to help the mature person cope with crime.

One of these endeavors is the Crime Prevention program. Crime Prevention is a science that can be defined as the anticipation, the recognition and the appraisal of a crime risk and the initiation of positive action to reduce or remove this risk.



American Association of Retired Persons

National Retired Teachers Association

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CRIME PREVENTION PROGRAM

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NOTE:

This program is structured to be given in four meetings, each of about two hours duration:

First Meeting.....	Street Crime
Second Meeting.....	Burglary
Third Meeting.....	Fraud/Bunco
Fourth Meeting.....	Community/Police Relations

5th Revision

TO CHAPTER/UNIT OFFICERS

The need for a Crime Prevention Program has been demonstrated to National Headquarters in many ways--by national surveys, by observations of our volunteers and by personal comments. The leaders of your Associations have responded to this need.

To move toward defining the problem and building a program we conducted considerable research. In addition to the review of many surveys and studies, this included correspondence, phone conversations and conferences with:

- 216 Police/Law Enforcement Departments
- 50 State Criminal Justice Planning Commissions
- 43 Associations/Institutes/Universities
- 9 Publishers
- 18 Government/State Agencies
- 10 Manufacturers
- 36 Alarm/Hardware Companies
- 7 Research Organizations
- 11 Film Producers/Distributors
- 42 Individuals

The next major effort was to analyze the masses of information and statistics and put them in a form that would meet the needs but not be overwhelming in scope or detail.

We urge you to be flexible in presenting this program. You may want to try variations such as those suggested in the Planning Guide.

Resource persons are usually easy to obtain. Most law enforcement agencies have members who are qualified in crime prevention activities. The graduates of the National Crime Prevention Institute at the University of Louisville in Kentucky are good resource persons for this program.

Let us help you if we can.

STREET CRIMEPRESENTATION SCRIPT

Meeting No. 1
(Two Periods)

(Aims)

-During this presentation we will cover the most common street crime problems and give specific and currently acceptable guidance to you.
-Through experience, law enforcement officers have developed knowledge of what the real dangers are--we will point these out to you.
-We will give you practical pointers to follow--things to do or not to do. These have been developed on the basis of much practical experience.

(Motivation)

-If you follow this advice, you will be able to increase your personal safety and reduce the risk of becoming a victim of street crime.
-One good example of a simple but effective crime prevention measure is known to all of you. At one time, bus drivers were subjected to assaults, robberies, and murders--mostly over a few dollars in the coin box. Bus drivers stopped handling money, the coin box was bolted to the bus, and this type of crime has almost completely disappeared.

(Introduction to Subject)

-Everyone, when out on the street, could be a victim but the older person, and particularly the older woman, is more often the prey.
-We will run a film which will show the things you should and should not do.
-In this film you will see how certain acts on your part may increase your chances of being victimized and how these chances can be greatly reduced by taking certain simple precautions.
-In the film you will see a woman returning from grocery shopping. She carries her purse in such a way as to make it easy for a thief to snatch it. The scene is reenacted to show you how a simple precaution will reduce this risk.
-The film will show things you should and should not do when walking at night.

-It will show you things to look for and to avoid while traveling at night.
-The question of carrying weapons will be discussed.
-Conduct in an apartment building will be shown. It will show you what to look for and what actions to take.
-Precautions will be given on safe conduct while driving at night--anti-crime precautions.
-Other crime prevention actions will be portrayed.
-Lastly, the film will show you some of the dangers of carrying guns or knives.
-We will now show the film. The title is:

WALK WITHOUT FEAR

Start film: WALK WITHOUT FEAR
(20-minute film)

(Recap of film)

-You have just seen a film which portrayed the most common situations that you may encounter on the street.
-You have seen how careless actions can increase your risks of being victimized.
-You have seen how certain protective and precautionary measures or actions can greatly reduce your risks.
-Immediately following the break we will cover in greater detail some of the things that you should know to make you safer from street crimes.

(BREAK)

STREET CRIME
(Second Period)

(Introduction to Second Period)

-During this second period we will present more detailed information and some additional pointers that you should know.
-The more you know about street crime and the more you understand it, the better your chances are to cope with it and thereby reduce your risks.

(Subject)

-Finding the causes of crime--why a person becomes involved in criminal activity--and finding solutions are among the most pressing social needs of today. Our nation and the world have spent and are spending thousands of millions of dollars in this quest. We know the ills of crime, but the cure remains elusive.
-Your Associations are using their influence in every possible way to encourage government, industry, and private endeavor to seek out the causes of crime and to find solutions.
-Until a cure is discovered we must deal with practical factors--those things you can do now to reduce your chances of being victimized.
-Three things are necessary before a crime can be committed--we might call them the parts of a CRIME TRIANGLE.
-The criminal must have:
 - the DESIRE to commit a crime,
 - an OPPORTUNITY to commit a crime, and
 - the POSSIBILITY OF ESCAPE.
-Now, it is true that a few criminals will commit a crime knowing there is no chance of escape, but these are usually crimes of passion or they are committed by that small minority who are mentally ill.
-In CRIME PREVENTION basic principles are to devise means to remove one or more of the angles of the CRIME TRIANGLE. The DESIRE, the OPPORTUNITY, or the ESCAPE.
-One thing we can do a great deal about is--REMOVING THE OPPORTUNITY. Street criminals are most often OPPORTUNISTS.

-Sometimes our very actions, like flashing sums of money, create a DESIRE in the criminal. Let us learn how to avoid these tempting actions.
-And we can do things that will greatly increase the possibility of ARREST should we be victimized.
-Now, having dealt briefly with the criminal, let's look briefly at the nature of street crime.
-The STREET CRIMES that we are most frequently subjected to fall into three major categories. They are:

Purse Snatch

Strong-arm Robbery (Muggings, etc.)

Holdup

-Purse Snatch is usually a hit-and-run operation--quite often done so quickly the victim hardly knows what has happened. The police so often hear the victim say that someone came up from behind, snatched the purse, and disappeared so rapidly that a good look at the thief was not possible.
-Strong-arm robbery is, as the name indicates, robbing by the use of force.
-Holdup is taking something from you by threatening you with a weapon, usually a gun or knife.
-Having now examined the criminal and having determined the principal problems, let us see what can be done about it.

WALKING

-You spend much of your time walking in public spaces--on the streets and byways--and you saw in the film some of the things you should not do. Do not give the criminal an OPPORTUNITY to commit a crime.
-Plan your route, especially at night. Follow well-lighted and well-traveled streets.
-Try to go with companions, especially after dark.
-If possible, someone should know your route and destination so that you will be missed if you do not arrive on time.
-Avoid dark places, short cuts, thick trees and shrubs, and sparsely-traveled areas.
-And, most important, try to be aware of areas in which there has been a large incidence of crime and avoid them.

In Stores

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.....Do not display cash except in small amounts.

.....Do not leave your purse unattended, as on the counter while you examine an item.

.....If you are transacting business and have your purse open, do not allow yourself to be distracted. Close your purse as quickly as possible.

Robbery

.....DO NOT RESIST! One of the most important points to remember if you are held up is DO NOT RESIST. Give the robber what he wants. Do not try to fight him. The police have countless records of persons who have sustained serious injury by resisting a robber whereas in most cases those who have not resisted have not been injured.

.....It is very important to remember enough about the robber to give the police something to work on. One technique is to concentrate on one or two identification points. They may be:

A scar on the face
A prominent skin blemish
A distinctive tattoo
A physical deformity

.....One or two really good points of identification will be of great help to the police.

.....Remember, many street criminals are habitual offenders and are well known to the police. Something like 80 percent of the felons in the criminal justice pipeline get back into the system.

Purse Snatch

.....Purse snatching is one of the most frequently committed street crimes and, again, the older woman is most often the target.

.....In the film you were given some pointers to keep in mind. We will give you a few more.

.....First, do you REALLY have to carry that purse or is it just a habit?

.....If you are just going to the grocery store, could you not do just as well by just taking the money that you need?
Or just a check?

.....Think prevention!

-Do not dangle your purse so as to make it easy to snatch.
You saw in the film how easy it was for the purse snatcher to grab the victim's purse.
-Again we emphasize relative values--injury versus property.
Do not carry your purse with the strap wound around your wrist or in such a manner as is likely to cause you to be pulled down if someone runs up behind you and snatches your purse.
-Now, you may think your law enforcement officers are giving you conflicting advice. This is not so. The police want you to keep a firm grip on your purse and not to be an easy target. Many times this will discourage a criminal - deny him an opportunity. But if a thief does grab your purse, do not expose yourself to the possibility of being thrown down or dragged.
-Following the advice of your law enforcement agencies presents a bit more trouble. All this takes a little extra thought and planning but we should strive to develop an attitude of being Crime Prevention conscious.

Driving

-The film gave some advice on driving. Some of this advice is important enough to review briefly.
-Keep your car doors locked and windows rolled up at least far enough to prevent anyone from reaching inside.
-Plan your route to avoid high crime areas.
-Travel well-lighted and well-traveled routes. You are less likely to be victimized in these areas than in dark and sparsely traveled streets and roads.
-Do not leave your purse on the seat beside you where it can be snatched easily.
-If threatened, drive off and blow your horn. The horn blowing may attract the police or scare off the threatening persons or attract help.
-When you park your car, always lock the doors.
-When returning to a parked car, always look inside - into both the back and front sections - to assure that no one is hiding in the car.
-Develop awareness - prevent crime.

Auto Theft

-Almost a million cars were stolen in 1971. That means you have a good chance of becoming a victim. Reduce those chances by taking simple precautions.
-Lock your doors!
-Never leave the keys in the ignition of an unattended car!
-Never leave the engine running if you leave your car--even for very brief periods!
-Out of all the cars that were stolen about 8 out of 10 had the doors unlocked and about 4 out of 10 had keys in the ignition. Considering the relatively few cars that were left with keys in the ignition, you can see that this act greatly increases your risk of being a victim of car theft.
-Develop an attitude of Crime Prevention.

At Home

-In the film you were shown several crime prevention pointers pertaining to conduct in and around your home.
-You should NOT automatically open your door when someone knocks, especially if you are alone. Know who is outside.
-If you live in an apartment, you should have a peephole viewer in your door.
-If the caller is an unwanted salesman, you can always say you are busy without opening the door.
-Telegrams can be slipped under the door without opening the door.
-If the caller wants to use the phone, take the message and make the call for him.
-If the person becomes threatening, you have time to call the police, or call others, or otherwise protect yourself.
-Be cautious in using laundry rooms when you are alone; try to have someone with you.
-Draw your blinds or draperies closed to prevent prowlers from watching from outside.
-If you hear a prowler, call the police immediately. If the lights are out, leave them out.
-On the telephone, do not say anything to indicate that you are alone when talking with an unknown person. If the call is obscene, hang up.

Self Defense

-Certainly one of the most important subjects that can be discussed is self-defense. What can and should you do about it?
-The first and cardinal rule is to try to practice crime prevention to the degree that self-defense will not be necessary.
-Avoid those situations wherein you may have to resort to self-defense.
-If you are robbed, do not resist if only property is at stake.
-Do not provoke the robber by actions or words. Do what he tells you to do.
-Many police departments suggest that you carry a whistle. If you do, carry it where it can be used immediately.
-Experience has shown that screaming is one of the best defenses for a woman who is being attacked.
-If you are the victim of an attack, you should do everything possible to protect yourself. Scream, call for help, kick, bite, fight, struggle. Try to run away to a place of greater safety. Scream while running.

Weapons

-During discussions about self-defense, the question is often raised about carrying weapons, particularly guns and knives. Questions that you might ask yourself before deciding to carry a weapon could be:
 - Is the weapon legal?
 - Is the weapon safe to use?
 - Are you trained to use the weapon?
 - Do you know the limitations of the weapon?
 - Do you know the law? How far can you go in the use of the weapon?
 - And, as the film portrayed dramatically, so often the weapon is used against the victim.
-More and more non-lethal weapons are coming on the market. Research has been continuing in this area of development of weapons. Your law enforcement agency may have advice on this subject.

Reporting Crime

-You should always report crime. Police use crime reports to determine the kinds and frequency of police patrols. They are used for a number of police purposes. Do not take the attitude that there is little use in reporting a crime.

.....Remember--if your report includes the description of a criminal, try to furnish one or two or more good, reliable identification features of the criminal.

(Summary)

-We have seen an educational film and have talked about crime--how to cope with it, how to avoid risks, and what to do in various situations.
-We have talked about the criminal triangle--DESIRE, OPPORTUNITY, and ESCAPE--how we can prevent crime by the removal of one of these factors.
-We have pointed out that the most common street crimes are purse snatch, strongarm robbery, and holdup.
-We know we can reduce our risks by taking certain simple precautionary actions.
-We have stressed the importance of not resisting if only property is at stake.
-We have pointed out some of the dangers of carrying weapons.
-Be aware! Be Crime Prevention conscious.

(Conclusions)

-We know there are simple measures or actions you can take to reduce your risks.
-Criminals are opportunists--do not give them an opportunity to commit a crime.
-Our most important message is to become Crime Prevention conscious.

Think how you can avoid crime
Think prevention.
Act prevention.
Be aware.

PRESENTATION SCRIPTMeeting No. 2
(Two Periods)BURGLARY-RESIDENTIAL SECURITY(Aims)

-During this presentation we will discuss some burglary problems as they pertain to private residences.
-We will show you what you can do to decrease your risks and to increase your security.
-We hope to encourage you to report those things that will help your law enforcement officers in their fight against crime.
-We hope to encourage you to become more security conscious and to ~~develop~~ a Crime Prevention attitude.

(Motivation)

-Burglary is the most frequently committed of the major crimes--of those crimes reported in the FBI Uniform Crime Reports.
-It is the opinion of many law enforcement officers that most burglaries can be prevented.
-If you develop an attitude of being security conscious and if you follow a few simple precautions, you can greatly reduce your chances of being burglarized.

(Introduction to Subject)

-Many people clearly understand what a burglary is but frequently interchange the words "burglary" and "robbery."
-A robbery is a person-to-person crime, a crime such as a holdup.
-A burglary, if we use the definition given in the Uniform Crime Reports of the FBI, is the unlawful entry of a building to commit a crime even though no force was used to gain entrance.
-You see, then, a robbery is a crime against persons.
-A burglary is a crime against property which requires illegal entry into a building.
-During this presentation we will talk about burglaries against homes, houses, apartments--those burglaries that are most likely to affect you personally.
-In the film we are about to show, you will see how some of your actions or practices actually "invite" a burglar to attack your home.

-You will be shown some security devices and
-You will be given some anti-burglary pointers.
-More than 50 law enforcement agencies cooperated in the making of this film.
-The information is timely, factual and can help you reduce your risk.
-We will now show the film. The title is:

INVITATIONS TO BURGLARY

Start film: INVITATIONS TO BURGLARY
(22-minute film)

(Recap of film)

-You have seen how some of your practices may actually "invite" a burglar to choose your residence.
-You have seen a film that explains various security devices that residents should know about.
-You have been given some advice on how you can discourage or prevent a burglary.
-During the next period, we will cover in greater detail some of the things you should know and repeat some of the things that are important to you.

(BREAK)

BURGLARY-RESIDENTIAL SECURITY
(Second Period)

(Motivation)

.....In recent years there has been a great increase in residential type burglaries. Since this form of crime is directed against you, we will show you what to do.

.....Residential burglaries are increasing at a greater rate than burglaries of businesses. More and more you are becoming the Number One target.

.....Daytime residential burglaries....burglaries committed in broad daylight....have been increasing at an unbelievable rate. As an example, in the last decade, between 1960 and 1970, daytime residential burglaries increased a whopping 337 percent.

.....And like many others, the burglar has moved to the suburbs. Some of the reasons for this suburban trend are:

There's lots of loot in the more affluent suburbs.

Easy in - Easy out. Those beautiful new beltways allow him to get in and get out fast.

Increased police patrol and increased security awareness in many cities have driven the burglar to greener pastures.

The suburban dweller quite often is more relaxed about security and makes an easier target.

Police are spread thinner in these areas.

More distance between houses and the opportunity to work hidden by shrubs and trees give the burglar a better chance to hit and run.

.....All these indications point to the fact that you--the resident--are becoming more and more the target of the burglar.

.....But even at that, major studies, surveys and many law officers state that most burglaries can be prevented and without too much cost or trouble.

(Introduction to Subject)

-During this second period, we will briefly examine the burglar and discuss some of the aspects of the crime of burglary.
-We will show you how quite often the burglar is an opportunist and when you present an opportunity it is an "invitation to burglary." Let's find out how to avoid these unwelcome visits.
-We will spend most of the time telling you how to reduce your risks--what you should do as countermeasures against the burglar.

(Subject)The Character of the Burglar

-First, a few facts about today's burglar.
-In military terms, to know your enemy is the first step toward victory.
-Most burglars today are young, and many are very young. As an example, in one study recently released, 64 percent of the burglars apprehended were under 18 years of age.
-Only a few are truly professional--most are amateurs who seize opportunities or search for opportunities to burglarize. This is to our advantage because it is very difficult to thwart a professional burglar. The others can quite often be thwarted by removing their opportunities.
-Most burglars do not want to attack anyone--they are looking for money or something to convert into money. However, if trapped, scared, threatened, or the like, they have been known to resort to violence. The lesson here is not to sacrifice yourself or be injured to save property. Try to get one or two good points of identification and report the matter to the police. Get away from the burglar. Let your law officer handle him.
-Drug addiction causes an astronomical amount of crime. Many addicts must steal the equivalent of a color TV every day to support their habit. They can be irrational and dangerous if confronted.

Points of Entry

-Most burglars enter a residence through a door and since they usually are not committed to hard work, they like to walk right in--which they do more often than you might think. So, from this, we should remind ourselves to lock our doors.

-Statistically, his second choice is through a convenient window. In one major city, a study disclosed that over 90 percent of the entries into residences were through doors and windows.
-Since he most often is a nonskilled worker, an opportunist and not looking for hard work, he'll pass up a locked door or window if he can find an easier way into the premises.
-Garages afford an excellent point of entry. He can often work out of sight and may even have you provide the tools to force the door. So often such tools are stored in the garage and an opportunist will not overlook this. The lesson here is to keep your garage doors locked.
-Openings leading to fire escapes are often used if they are unprotected from the outside.
-Make your own burglary survey. How would you break into your home?
-An example, burglars have been known to slip air conditioners out of windows to afford entry. Sometimes they walk off with the air conditioner as well as your favorite fur.
-With these thoughts in mind, take another look at your residence and think how you can improve your security. In the case of the air conditioner, a few screws or other fasteners would make it more difficult.....and that is what you are trying to do.....make entry more difficult. Making entry impossible is almost impossible, unless you want to build another Fort Knox.

Methods of Entry

-Keeping out a professional is very difficult.....fortunately there are not too many of these around in proportion to the nonskilled.
-Some of the accomplishments of truly skilled burglars have made even old-time law officers gasp with admiration. A classic example was the penetration of an island fortress set up by a wealthy gangster. The pro, who was later caught, said it was just too much of a challenge. His team included expert electronic technicians and skilled locksmiths. You can't beat combinations such as that. What you can do, though, is not make it worth his time.....and that is a fundamental anti-burglary principle. If you reduce to a minimum the valuables you have in your home, you can deny the burglar.

.....So we will devote our consideration to those methods employed by the common, street variety of burglar..... the one who is most likely to enter our homes.

.....We will just list some of the things that show up in crime statistics.....the experiences of your law enforcement agencies.

.....How do they get in?

An unlocked door.

Finding your "hidden" key.

Breaking out glass pane in door and reaching in to unlock door.

Window open or unlocked.

Slipping, picking or pulling lock.

Removing exposed hinge pins and swinging door open from hinge side.

Kicking in door panel.

Forcing or prying door open.

Lifting patio sliding glass door off tracks, forcing flimsy lock, prying sliding door.

.....These are things that most often come to the attention of the police. You see, then, that most of these operations are relatively simple and easy to do.

.....Some hit-and-run burglars observe your residence and note the activity. If you are working in the yard and there seems to be no other activity, they will slip into the house through the unlocked door on the opposite side, keep you in view and get out after grabbing everything within easy reach.

.....Some burglars make a practice of phoning your residence first; if there is no answer, they follow this up to see if your place is ready to be burglarized.

.....A small minority that deserve special attention is the so-called "cat" burglar who enters an occupied house at night and stealthily removes your valuables, including the wallet under the pillow. He can be dangerous. Be careful if you awaken while he is still there. It is best to avoid him.

Pilferable Items

- Well, in your residence, what is he likely to look for?
- Usually he will take anything that can be easily converted into money.
- Since money is what he wants, money is one of the main things he looks for in his search. Many convicted burglars who have been interviewed in the course of studies have said this over and over.
- Now, he may want dope, but money, or its equivalent, is his vehicle for a ride his dream cloud.
- Just because he is looking for money doesn't mean he will pass up items that are easy to convert into money.
- These are some of the things most frequently stolen:

- Appliances that can be easily sold
- Binoculars
- Cameras
- Coin Collections
- Credit Cards
- Expensive Bicycles
- Furs
- Guns and Gun Collections
- Jewelry
- Other Valuable Collections
- Power Tools
- Sporting Goods
- Stereos
- Tape Recorders
- TV's
- Typewriters
- Valuable Tools
- Watches

- Think of items in your home that fall into this general category of pilferable items. What do you have that we have not mentioned?

Countermeasures

Now, having learned this much about the burglar and how he operates.....let's see what we can do to encourage him to follow another line of work.

- We will go into some detail and tell you some specific things to do to reduce your risk of being burglarized but, first, it may be more important to touch on some basic anti-burglary principles.

.....These are the 4 D's.....

Deny
Deter
Delay
Detect

.....Because this is a major subject area and people spend entire lives in the study of security, we can talk about only those things of greatest importance to you. If you remember these basic principles and apply them to your residence, you can go a long way toward determining your own security needs. Remember, you can't guarantee **your** home will be burglary-proof. You can, very definitely, switch the odds to your favor.

.....If you want to increase the security of your home, think how you can deny, deter, delay or detect the burglar.

.....Corollary principles of protection are, the burglar does not like:

Locks,

Light or the

Law.

.....We will discuss the practical application of these principles of protection as they relate to burglary.

.....Deny.....How can you deny the burglar?

.....If you have no money in the house, you have denied him.

.....How else can you deny him?

.....You are the best judge of this. Think of those things you can do to deny him.

.....Can you place valuable jewelry in a safe deposit box if it is used only rarely? This will deny him.

.....Can you place your furs in storage during the warm season? This will reduce your exposure and deny him during the period they are in storage.

.....With these few examples as a starter, think what might be stolen from your residence and how you can deny the burglar.

.....Don't underestimate yourself! You can be your best security advisor. It takes a little time and a little thought.

.....If you can't deny him.....let's think about how we can deter him.

-Lights that are placed to make the house look occupied while you are away for the evening will make him think twice.
-Keep interior and exterior lights on while you are away for the evening.
-The best general advice along the lines of making the burglar hesitate is to make your place look occupied. How can you do that? It is not so difficult, is it?
-How about a barking dog? There are times when poor Fido gets the wrong end of your boot for barking at Uncle Andrew, but he may be more valuable than you think. Give him a dog biscuit. He may be your best alarm system.
-Some have found that a radio playing at normal volume has been a good deterrent. With a few lights and a radio or TV playing, the burglar may think you are enjoying an evening in your favorite armchair. It will make him think. If someone is going to follow burglary as a line of work, let's make them work at it. Many times these simple measures will cause a burglar to try a less risky residence. One burglar told a policeman, after his arrest, that burglary of residences was so easy he couldn't resist the temptation.
-Now that you are rapidly becoming your own security expert, what other ways can you think of to deter a burglar from attacking your residence?
-On the contrary of deterrents.....let's consider for a moment some "invitations" to burglary.
-An "invitation" to burglary may be an open garage door with no signs of activity. If your garage door is open, and there is no one about, the burglar may very well boldly walk to the front door and knock vigorously several times. If you answer, he might ask if Suzy Z is at home, and when you reply in the negative he will be off to his next attempt. If there is no answer, this is an open invitation to proceed to the garage, use your tools and make his entry.
-And while we are talking about "invitations," how about a ladder leaning against the house and no one about the premises? The same routine as the open garage door caper, plus a ticket to the porch roof or second floor if you were inconsiderate enough to lock your doors and windows on the ground level.
-And a better one than that. Cousin Mabel has promised you one of her geraniums, so while you are away shopping for the afternoon you leave a note on the front door instructing her to leave the pot on the back porch, saying that you will return at 4:30 p.m. What more could a burglar ask?

-Other "invitations" are too much shrubbery, or shrubbery that is too thick, and lots of dark places. Consider additional lights to illuminate the dark areas. Consider trimming the shrubbery.
-Another "invitation" to burglary could be the careless use of your house keys. Do not carry I.D. tags on your key ring or key holder. If you lose your house keys, it is better to have them lost and gone forever than to have them returned by a burglar.....a return that usually occurs during your absence.
-Separate your house keys from your car keys if you park in places where your keys must be left with the car. It is too easy to duplicate your house keys. Your residence address can easily be determined. In fact, it might be readily available if you leave your registration card in your car. Some states require such display of cards.
-Basement doors or windows are sometimes weak points in the security of your home. These places often provide opportunities for the burglar to work hidden from view. You may want to consider extra protection for these vulnerable openings. Possibly a metal grille over the basement door if the door has glass in it. Or possibly a bar across the inside if the door is solid.
-We can just give you a few examples of some things you can do. If you remember the basic principles pertaining to protection, you can determine most of your own needs. Examine your house from the burglar's point of view.
-Of course, if there has been no burglary problem in your area, you will not likely make a fortress of your residence. You should, however, always take the minimum, simple, and prudent precautions. Do not give the burglar "invitations" to your home. Do not leave an expensive 10-speed bicycle in full view in an open garage during periods of your absence. It takes such little time to close and lock the garage door.
-Many burglars spend considerable time just cruising and looking for such "invitations" to burglarize.

Vacations - Prolonged Absences

-Your residence is particularly vulnerable to burglary during periods of prolonged absences. For this reason we will devote special attention to some of the precautions that should be taken.
-Again, we want to continue to follow our principles of protection.....a basic principle. Do everything possible to make the place look "lived in."

-So.....to make your place look occupied, stop all deliveries, have the lawn tended, put some lights on timers so they will come on at darkness and go off during the day.....be your own security expert. Think of those things you can do to make your place look as if someone is about or may return in a short time.
-If you can arrange it, try to get a friend, relative, or neighbor to look after your place--pick up handbills to prevent them from accumulating in the mailbox, turn lights on or off, change the shades from time to time as you usually do, take those actions necessary to make the place look as if someone is living there.
-Notify your law enforcement agency of your absence and let them know how you can be reached in an emergency.
-Do not have social notices posted in the paper as to your departure and duration of your absence. Have this done AFTER you return. Do not advertise to burglars that you will be away.
-Secure all valuables during your absence. Do not leave money in the house. Place valuable jewelry and other items in a safe deposit box. Lock up cameras or other items of high unit value. Do whatever you can to deny the burglar these items.
-And upon your return if you see a forced door or window or other indications of a burglary, do not enter. Go to the nearest phone and call the police. Have the police enter and search the place first. Do not take a chance of walking in on a burglar and having a confrontation. Let the police take that chance.

Hardware

-On our way toward helping ourselves become better acquainted with how to secure our residences, we have talked a little about DENYING the burglar the opportunity to steal; we have considered some of the ways we can DETER him; now we will take up some of the ways to DELAY him.
-Don't make his work easy. Use every possible means to delay him.

A locked door delays him more than an open door.

A good lock delays him more than a poor lock.

A strong, well-secured door delays him more than a screen door.

But keep both doors locked.....the screen door and the solid door.

Use every possible means to delay him.

-The more ways you can employ to delay him the greater the chances that he may be scared off, apprehended or just plain discouraged.
-Does the hardware in your residence serve to DELAY the burglar?
-How effective is your hardware?
-Examine your outside doors. Do they have spring-bolt door locks? Open the door and see if you can push the bolt back by pressure against the beveled face of the bolt. If you can, then a burglar can open your door by pushing a thin strip of stiff plastic against the bolt. This is a very common weakness in house door locks. Most door locks are spring operated.
-On doors that have glass panes, can a pane be broken and the door opened by reaching inside? If so, this door may need additional protection. One practice widely used in this case is to install a double-cylinder lock which requires a key to open the door from the inside. Another way is to place a wire grille over the glass part of the door. This is often done on basement doors where the appearance of the grill is not objectionable.
-Check your windows and other openings into the house. Have you made it easy for a burglar to enter?
-There are many styles of hardware in many price ranges to meet your security needs.
-Many homemade and self-installed devices can be very effective. We will consider a few.
-In the case of windows that slide up and down, double-hung windows, it is easy to drill a 1/4-inch hole through the window sash into the frame and provide for a steel pin. Holes can be drilled at other levels to permit the window to be raised or lowered slightly for ventilation. Pins can be easily made by sawing off the head of large nails. Make the pin just long enough to be flush; then it will require a magnet to remove it. Cheap, easy and a means to further delay or deter the burglar.

-A stick similar to a broomstick can be laid in the tracks of sliding glass doors to prevent them from being opened. Some burglars have been known to flip these sticks out of the tracks with a long, thin screwdriver, but in most cases these sticks can be effective locking devices for the door.
-Sliding bolts are cheap and easy to install. They can be very effective.
-And remember about chain locks. Few chain locks will hold if a man throws his weight against the door.
-There are too many kinds of hardware and too many possibilities for us to consider them here.
-Perhaps you might undertake the formation of a burglary security inspection team to cooperate with the law officers in making home security inspections.

Alarms

-Should I have an alarm system?
-How effective are they?
-What kind of alarm system should I have?
-These questions are asked many, many times and all we can say to each question is that it depends on many factors.
-The alarm industry has grown to large proportions in this country in response to the needs growing out of the increase in crime. There are now vast varieties of alarm systems and alarm components that can be bought on the open market.
-We will talk briefly about a few that may answer your needs.
-Of course, you all know of elaborate systems that are engineered and installed by major companies with a price tag to match. If you feel you have a major problem and if you have the money to spend, you can solve this by calling in a reputable, well-established company.
-On the other end of the price scale, there are simple, single-unit alarms that serve one specific purpose, such as to alarm one door.
-An example is an alarmed door lock that will sound an alarm if the door is forced open. It is battery operated, needs no wiring and can be purchased from several large manufacturers. This is low-priced.

-Another example is a portable unit that sounds an alarm if someone passes between this unit and a light source, such as a table lamp. These are frequently placed on one table and pointed at a lamp on another table so that an alarm will be sounded if someone passes from the outside door across the room toward the bedrooms or stairs. It will alarm if the light is turned out. This is low-priced.
-There are kits sold as a package for self-installation that provide protection against entry through exterior doors and selected windows. These kits can be bought for prices ranging from about \$25.00 up to much larger amounts depending on how extensive a system you want.
-There are also systems that require no wiring. These units are powered by small flashlight-type batteries and transmit signals to the alarm control by radio waves. One caution in the use of these is to assure that the batteries are replaced routinely.
-There are motion detectors that saturate a room or protected space with ultrasonic waves. Any motion in this area after the unit has been activated will sound an alarm.
-There are numerous kinds of barrier alarms, such as infrared rays that sound an alarm when someone passes across the beam. The old-fashioned Army trip wire is a form of barrier alarm and many old soldiers know how to fabricate one of these at home.
-If your area has the need and you can find persons to form a security inspection team, these would be interesting subjects for inquiry to further your local interests.

Weapons

-Many people keep weapons around the house. We will talk a little bit about this.
-This is a personal matter and you alone must decide what you are going to do.
-However, we think it well to repeat here the same questions we are asked in the presentation on STREET CRIMES:

Is the weapon legal?

Is the weapon safe to use?

Are you trained to use the weapon?

Do you know the limitations of the weapon?

Do you know the law? When can you legally use the weapon?

Have you thought of the possibility of the weapon being used against you?

.....There is an additional danger that requires special attention. There have been many cases of people shooting members of the household by mistake. A person who awakens from deep slumber and sees a shadowy figure may fire in haste and shoot an innocent person. This possibility must receive your careful attention if you keep a gun. Most law enforcement agencies advise against keeping guns even in areas where they are legally owned.

.....If you should confront a burglar, it is best to let him escape. Try to remember one or two good identifying features, such as scars, tattoos, or deformities. The better your description the better the chance of apprehending him.

Police Cooperation

.....The police alone cannot control crime.....they need your help.

.....Lend your law enforcement officer your eyes and ears.

.....Help control crime and protect your neighborhood by reporting:

Suspicious persons in the neighborhood.

Unusual actions, such as someone leaving a neighbor's house with a TV when you think the neighbor is not at home.

Unfamiliar cars that repeatedly cruise about the neighborhood or park suspiciously for periods of time.

License numbers of cars that are unfamiliar and that are doing unusual things.

(SUMMARY)

.....We have covered many aspects of the burglary problem during this presentation.....probably too much for you to remember.

.....We will hasten through a brief review.

.....We pointed out that burglary is the most frequently-committed of the major crimes.

.....We noted that residential burglaries are more numerous than those against businesses and that daytime attacks are growing rapidly.

.....We noted that most burglars are young. In one State, 65 percent were teenagers and more than half of all the burglars were under 17 years of age. These figures are higher than the example we quoted in our presentation and serve to emphasize the youthfulness of the modern burglar.

.....Most burglars enter through doors with convenient windows a close second.

.....The items that are most often stolen are those that can most easily be converted into money. These include expensive and portable items, such as color TV's, stereo sets, cameras, guns, radios, and similar items, as well as the traditional items, such as furs, jewelry, watches, and money.....especially money.

.....And, last, what you can do about it.

The more you deny the burglar the less he will get.

The more things you do to deter him, the less likely you are to be a victim.

We noted many examples of things you can do to delay him.....and

Detection. There are many devices, both inexpensive and costly, that you may choose to detect him. Not least of all is your dog as an alarm system.

.....If you try to do your part in burglary prevention and help your law officers do their part, a great many burglars will have to turn to other lines of work.

(CONCLUSION)

.....There is no sure way that you can prevent your residence from being burglarized, but a few simple procedures and possibly a few extra pieces of hardware can greatly reduce your risks.

.....A recent study concluded that the ordinary citizen can reduce his chances of victimization by taking a few simple precautions and that a substantial number of residential burglaries were the result of carelessness which provided easy opportunities for burglars.

.....Remember the captured burglar who told the sheriff
that breaking into a house was so easy that he could
not resist the temptation.

.....Let's try to remove that temptation.....Practice the
principles of protection by following the four D's"

DENY
DETER
DELAY
DETECT

.....It can be done.

Meeting No. 3
(Two Periods)

FRAUD/BUNCOPRESENTATION SCRIPT(Define Aims)

-During this presentation we will show you some of the most widely practiced bunco schemes.
-We will alert you to the actions that you can take to reduce your chances of being victimized.
-We will show you how you can cooperate with law enforcement officers to increase the chances of bringing these criminals to justice.

(Motivation)

-You say, "It can't happen to me!"
Well--maybe not.
You say, "It hasn't happened to me yet and it won't!"
If you have never been swindled, then you are speaking from a strong position.
-BUT--law enforcement officers throughout the country are constantly receiving reports of criminal fraud and quite often the first thing they hear is, "How could this happen to me?"
-We hope you are never victimized. Let's be aware and be better informed as to how we can avoid being victimized.

(Introduction to Subject)

-In the film we are about to show, you will see enacted four episodes. Each depicts a common form of criminal fraud.
-In the first episode you will see how the BANK EXAMINER FRAUD is worked. You will see how these clever operators go about selecting a victim, how they determine if the victim has a bank account, how the victim is drawn into the scheme, and how cleverly the victim is induced to turn over cash to a stranger.
-In the second episode you will see how a swindler weaves his plot, how he plays upon the emotions and weaknesses of his victim, and how he secures a contract and binds the victim to an agreement far beyond what she has talked about.

-In the third episode you will see how the home repair fraud is worked. The swindler offers such a good bargain that no homeowner can resist it--until the time comes to pay.
-In the fourth episode you will see how the infamous and eternal PIGEON DROP swindle is worked. This is too incredible to believe. But every day, somewhere in the country, it is being practiced.
-After showing these four commonly practiced schemes, the film will quickly reenact each episode to show how the intended victim could have aided in setting up an arrest.

(Start Film) (27-minute film) ON GUARD - BUNCO

(Recap of Film)

-THE BANK EXAMINER--you have seen how he operates. He is likely to pick a victim who is alone and who is not likely to have an immediate opportunity to discuss the PLAN with someone. You saw how quickly he steered away from the intended victim who lived with her son--experience has shown him that this lady would have probably confided in her son and this would have reduced the chances of successfully carrying out the scheme. You saw how cleverly he determined where the victim banked. You saw how he drew the victim into the PLAN by seeking her help to catch a crook in the bank.
-The contract--You saw how easily the salesman led the victim into signing a contract that was different from the various subjects of conversation. This trick is becoming one of the most frequently practiced frauds. Be sure you know what is in the contract before you sign. If there is any doubt, hold the contract for a few days.
-The home repair fraud--There are endless varieties of this swindle. You were shown how the home improvement offered such a good bargain that the homeowner could not pass it up--until it came time to pay.
-AND the PIGEON DROP.....how can this incredible swindle be practiced day after day? The film told it all.

(Summary)

-These well-dramatized episodes show so well how smoothly these talented swindlers work.

.....We cannot emphasize too strongly the importance of knowing the conditions of any contract that you sign. The best advice is to hold the contract until you have had ample time to examine it fully--and possibly discuss it with a friend or relative.

.....Home repairs? If you do not know the repair man well, then you must learn how to shop for quality economical repairs the same as you have learned to shop for groceries--or have a knowledgeable friend advise you.

.....The Pigeon Drop?--Enough is said when we say that you should always be suspicious when a stranger offers to share a sizable sum of money with you.

(Conclusions)

.....We hope that you are now more aware of the methods of operations of some swindlers and are thereby better able to avoid victimization.

.....We hope that you may now be better informed as to how to help law enforcement officers in their efforts to apprehend these criminals.

(BREAK)

FRAUD/BUNCO
(Second Period)

(Define Aims)

-During this second period on Fraud/Bunco we will tell you about a great number of different schemes. These are but a fraction of the many varieties of schemes presently in practice about the country.
-Many of the things you were alerted to in the first period relative to spotting a bunco artist also apply to these schemes.
-And again, the points brought out in the first period apply relative to cooperating with law enforcement officers in trying to get more of these criminals out of circulation.

(Motivation)

-Get rich quick?
Something for nothing?
Secret Plan?
You must act now and sign here!
-Quite often these are the tunes of a bunco artist. If it is easy to get rich quick, why isn't he doing it?
-Something for nothing? A retired bunco artist once said that when you get something for nothing most times you get something that ain't nothing.
-Why must you sign right now instead of holding the contract long enough to think about it and seek advice about it?
-And, unless you are in the military, you always want to be wary of these secret plans, like help me catch the thief in the bank but please do not tell anyone.
-Being educated and being intelligent are no insurance against being swindled. Police records are loaded with reports of such people being victimized.
-Swindles are practiced against all age groups, against both men and women, against both educated and poorly educated.....there is no restriction to joining the club of those who have become the victims of criminal fraud.
-However, most often it is the older person and very often this older person is a woman who lives alone.

(Introduction to Subject)

-In our first period we dealt with some widely used schemes, some of which must be practiced on a person-to-person basis. That is, the Bank Examiner and the Pigeon Drop are person-to-person encounters.
-We will now consider MAIL FRAUDS, a category that is growing rapidly with almost limitless variations.
-From an investigative standpoint, the Chief Postal Inspector lists about 68 major categories that cover those frauds under his investigative jurisdiction.

(Subject)

-The Chief Postal Inspector has listed the following as being particularly active areas:
-Those frauds directed toward CONSUMERS.
-Those directed toward persons seeking BUSINESS OPPORTUNITIES.
-Those involving MEDICAL FRAUDS.
-Those directed toward persons seeking SELF-IMPROVEMENT.
-There are other categories, but we do not have time to devote to other than the most frequently practiced swindles.
-Under the category of CONSUMER types we have:

The FAKE CONTEST

It often starts with the exciting statement that you have won. In reality, it is a contest wherein no one wins--there are only losers. This can be practiced by mail or by advertisements or by telephone solicitations.

HOME IMPROVEMENTS

Home Improvement swindles place high on the list and have long been among the most popular. So often the Postal Inspector is brought into the case because somewhere along the line the mails were used to defraud.

CHAIN-REFERRAL SCHEMES

This scheme has also been an all-time favorite and continues its popularity. You buy an appliance or some product and supposedly will

have little difficulty getting the item for "free" since you will get a commission for each additional item you sell. Few sell anything and usually the item is far overpriced.

DEBT CONSOLIDATION

Legitimate banks and lending institutions do have honest services for debt consolidation and counseling. However, there are dishonest services that place the debt-ridden person into an even worse situation by "consolidating" his debts with heavy additional financial burdens.

RETIREMENT ESTATES

So often the bargain looks so attractive you cannot afford to turn it down. An acre of land for only \$350.00 and golden sunshine 360 days per year. We have investigated some of these offers and find that if you go to the area any real estate agent will sell you all the land you want in a nearby tract for \$30.00 per acre.

.....Under the category of BUSINESS OPPORTUNITIES we have, among others:

BUSINESS FRANCHISES

Franchising is a legitimate and rapidly expanding industry. A hamburger chain or hotel chain or restaurant chain develops a name and some speciality (such as fried chicken) and has an honest business offer. So often, in the fraudulent operation the name you buy is valueless and the services offered are either non-existent or sold at unreasonable costs.

WORK-AT-HOME

Persons, particularly women, seek additional income by working at home. The Chief Postal Inspector reports that one newspaper ad drew more than 200,000 inquiries. This was in answer to a fraudulent offer. To qualify the persons had to send in a small registration fee and perform a sewing task to demonstrate skill. No one qualified and none of the money was returned.

.....Numerous other business opportunities are offered-- vending machines, distributorships for merchandise, area representatives, and many others.

.....Under the category of MEDICAL FRAUDS there are:

FAKE LABORATORY TESTS

The postal inspectors investigated a case in one State wherein a fake laboratory conducted more than 15,000 fake tests for cancer at a cost of \$10.00 per test. A goodly profit when you consider the small overhead.

MIRACLE CURES

There is always someone somewhere who claims a cure for any condition. Often, these are publicized through newspapers or magazines and the quackery is consummated by the use of the mails.

MAIL ORDER CLINIC

The victim is drawn into the scheme by offers of free medical diagnosis or some other bait and then is trapped into expensive long-term and useless treatments.

.....Under the category of SELF-IMPROVEMENT we have

EMPLOYMENT OFFERS

In the fraudulent offer, persons eager to achieve self-improvement are drawn into contracts requiring regular payments for useless services purportedly leading to attractive job opportunities.

CORRESPONDENCE COURSES

There are many legitimate courses offered, but the fraudulent correspondence schools are in keen competition. The victims usually are induced to sign contracts which trap them into regular payments from which they cannot legally escape.

.....In addition to the frequently practiced schemes shown in the film, and in addition to the many mail frauds commonly practiced, there are many, many others.

.....One national authority has stated that there are in existence more than 800 different schemes to bilk, defraud, or otherwise illegally separate a person from his money or property.

.....Let us look at some of those that frequently come to the attention of law enforcement authorities.

ADVERTISING CAMPAIGN

Quite often this approach is used as a "lead in" or to get a foot in the door by making you think you have been chosen to feature in an advertising campaign. You may be told that a survey has shown that you are a leader or that you are unique in some way and this feature will be used to build an advertising campaign. You will be given benefits or some inducement to participate. Be sure that your benefit is not in the form of a contract or deed of trust signing away your home if you fail to keep up payments on something you later decide is not worth keeping.

You can see that this is a fraudulent exploitation of a legitimate business practice. Quite often a political or business leader is selected to be the feature of a LEGITIMATE advertising campaign and he receives some legal reward for lending his name to the campaign.

BAIT AND SWITCH

Here again we have a legitimate sales technique that is often extended into unfair and illegal practices.

The legitimate merchant often will advertise a commodity at a low price, even at cost or below, with the idea that you will be attracted to his store and buy something else or get into the habit of shopping there. He has the bargains for sale and in reasonable quantities and does not complain if you shop his store and buy nothing but the bargains.

The illegal "come-ons" are ridiculously priced merchandise that does not exist, or will not be sold, and the only intention was to get you into the store to steer you to an unknown brand at a high price.

CONTRACTS

Signing a contract that contains terms that go far beyond what you anticipated is one of the integral parts of so many swindles today. If you learn nothing else in this presentation, we emphasize KNOW WHAT YOU ARE SIGNING.

Examples that may shock you are these:

Recently, a prosecuting attorney told of a case wherein a salesman had a blind man sign a contract which was subsequently sold to a finance company for collection. The salesman, of course, flew the coop never again to be found. BUT the blind man was put to untold agony and expense trying to extricate himself from the contract which had been sold to a finance company and the finance company was "Holder in Due Course." What made the whole deal stickier was a deed of trust to the man's house was included in the contract.

Another prosecuting attorney told of a case wherein a magazine salesman sold a 91-year old woman a series of 10-year subscriptions, which was legal, but he also got her to sign a note, including a deed of trust to her home, and sold this note to a finance company for collection. Again, the finance company was "Holder in Due Course."

CASH TO PAY OFF YOUR DEBTS

By now you are beginning to see that so many frauds are illegal extensions of legitimate business practices. Here is another:

The victim is deeply in debt and is looking for some relief when he sees an advertisement or is told by someone that he can get cash for his debts and make the future free of worry. He quite often does get cash, usually a small amount, and he gets his debts "consolidated." But what a price he has to pay. Pretty soon he finds all the sweet talk has evaporated and now there is nothing but harsh words and threats. He has signed a contract that binds him to everything including the village whipping post.

CHARITIES

It is sad but so many frauds are carried out in the name of good works. One estimate puts the fraudulent charity losses at more than \$100 million per year, but no one really knows. First, so often the contributor does not know his money is being diverted from a good cause and, secondly, there is no way of knowing how many of these rackets are being worked.

Here again, we say know who you are dealing with and be sure the money gets to where it is intended to go.

DEEDS OF TRUST

This vicious practice is particularly cruel because it can have such distressing economic effects upon the victim.

Many persons have been tricked into signing contracts which contain a deed of trust to the home as a means of securing the contract. These cases are not uncommon.

As an example, a woman signed a "receipt" for a TV set which turned out to be a contract for payment which was secured by a deed of trust to her house.

A man signed a contract for some relatively minor home repairs, and when he fell ill and could not meet the payments, he found the contract had been sold to a finance company and was secured by a deed of trust on his home.

FAKE TITLES

Do you know there was a swindler operating in a major city who was selling parked cars off the street? He had a pocketful of fake auto titles and was giving bargains right there on a busy street. Considering he had no money invested in the inventory, anything he got for the sale was 100-percent profit.

Again. learn to be a good shopper! Know your product; know with whom you are dealing.

FEAR-SELL

Another technique used to rush a victim to the slaughter.

Your tree is so rotten that unless it is immediately cut down you may find it on your home!

Your hot water heater is about to blow up and must be replaced immediately!

The electrical wiring here is so bad that unless something is done right now your house will burn down!

If this part on your car is not replaced now you are likely to have to buy a new engine!

This is what is known as "fear-sell" and frequently is used to frighten you into the arms of the swindler.

THE INSPECTOR

This swindle is worked in a variety of ways but essentially depends upon someone posing as an official inspector.

As an example, we will tell you of a widely practiced operation in one city. In this swindle, a man posing as a city inspector presented himself at the door of the homeowner, displayed phony credentials, made the statement that he was making a routine inspection, and gained entrance. He inspected the hot water heater and declared it unsafe. Then disaster--the water had to be turned off immediately to avoid a calamity. Now--how long can a family in the city endure without water. Even overnight is beyond the endurance of most people. When you consider the bind that this puts on the housewife who has to cook, or the kids that go unbathed, or the husband who goes unshaved, you can see that something must be done right away. So the kindly "inspector" just happened to know of a plumber who could respond to an emergency and restore the appliance to satisfactory working condition. The plumber responded, did little or no worthwhile work, charged an exorbitant amount and, to add a little kicker, signed up the homeowner to a fat maintenance contract.

If you have any doubts about the city official, call the city hall or other appropriate place and verify the story that has been told to you. If the inspector is a phony, he will undoubtedly disappear during your phone call. If he does, try to give the police a good description and tell them his methods of operation.

INVESTMENTS

There are not many people buying stock in Klondike gold mines anymore, but many are buying stock and investing money in a vast variety of fake enterprises. We laugh at the number of times that the Brooklyn Bridge was sold, but only the name has changed. We are still investing large sums of money in buying nonexistent land developments, bright new business opportunities, and endless other fake offers.

HOME IMPROVEMENTS

We mentioned this as a major mail fraud-- it is also worked without involving the mails. Some observers of the fraudulent follies state that home improvement frauds take second place only to door-to-door magazine salesmen and it makes up for its second-place standing by involving a bigger take.

Complaints would make a bronze statue weep. Paint that washes off with the first rain. Aluminum siding that peels as the repairman drives off into the sunset. Lightning conductors made of painted rope. A comedy script writer could not think of the preposterous frauds that are practiced every day upon the public.

Again, you must learn to be a good shopper. Know your contractor. Know your product. Seek good advice. Consult homeowners who have had work done by the same contractor.

LOANS WITHOUT INTEREST

If any company can lend you money without interest and stay in business--they are not in the money-lending business but are in something else.

The ad may say "\$1,000.00 without interest," but that is not the way the story unfolds when you go down to the loan office. Most likely you will sign a note for \$1,000.00, get considerably less in cash, and be bound to charges, interest, and maybe other conditions that you didn't bargain for--but will find out about later.

STREET CORNER SALES

Buying flowers from a street corner vendor is a reasonable thing to do, but buying a new color TV out of a stranger's auto trunk is something else. We can only say, "Buyer, beware."

(Summary)

-As we said at the outset, the variety of fraudulent schemes is almost endless. As soon as one becomes well known and less likely to succeed, a new variation springs up. You surely will see new fields of fraudulent endeavor in the environmental, ecological, and pollution fields. Then when space travel becomes popular, you will find hawkers selling tickets to unknown heavens, promising streets of gold and eternal bliss with a set of feathered wings thrown in FREE.
-Bunco artists are, knowingly or otherwise, astute students and observers of human behavior. Their basic tools in the trade are knowledge of ways to manipulate people to go along with the scheme. Their desires, ambitions, and weaknesses are exploited to lead the victim to the slaughter.
-The desire for self-education has resulted in a long and persistent string of correspondence school frauds.
-The ambition to have a small retirement business has resulted in many frauds in this area.
-The hope of gathering in a nest egg without much effort has led many to lose the last of their savings.
-The older person who is lonely is a special target of these swindlers. The lonely person yearns for some attention which is freely given by the bunco artist until he gets his loot. In addition, the older person, who lives alone often can be maneuvered so as not to consult anyone.
-Just because you have never been swindled is no guarantee you never will--it just shows that you have a good track record so far. You may meet your match.
-Just because you consider yourself well-informed and well-educated is no insurance against being swindled by a well-informed and well-educated swindler.
-If you are swindled, help the law enforcement officers as much as you can to apprehend the criminal.
-In a major survey of a few years back, 9 out of 10 victims did not report the swindle to the police. Half of the victims felt they had gotten themselves into the swindle and therefore were at fault. About 40 percent felt that nothing could be done anyway.

(Conclusions)

.....So, we would like to go over some of the things that are most important to remember:

Be aware!

Know what you are signing!

Be cautious about any Get-Rick-Quick scheme. If you are offered something for nothing, be sure you know what you are getting and who is giving it to you, and be especially careful about what you sign to get it.

Be cautious about being rushed into things.

Be leery of secret plans. There are times when secrecy is a legitimate means used to achieve an end--such as a plan entered into with law enforcement officers designed to trap a criminal. In every case of this kind you can verify the authenticity of the officers. You can call police headquarters and check with the commander.

Cash--be careful about being drawn into any arrangement wherein you must turn over sizable sums of cash to anyone, especially if the person is a stranger.

END

Program Title.....Crime Prevention

Subject Title.....Fraud/Bunco
Words and Phrases

The following words may be useful to you as background information for a discussion following the presentation:

Bait and Switch

A method of operation wherein a person is attracted by a particularly attractive bargain or "bait" and then switched to an item that is overpriced.

Bilk*

To cheat out of what is due.

Bunco*

Sometimes spelled "Bunko." A swindling game or scheme. (Perhaps derived from the Spanish BANCA, meaning "a bank.")

Cognovit

An acknowledgment or confession by a defendant that the plaintiff's cause is just. See Confession Judgment.

Confession Judgment Note

A common provision of an installment contract wherein the purchaser signs away his rights to any court defense. In other words, if you do not make the payments, or in any other way do not abide by the provisions of the contract, the holder of the contract can easily secure a judgment in court.

Defalcation*

Embezzlement.

Defraud*

To deprive of something by deception or fraud.

Embezzle*

To appropriate fraudulently to one's own use.

Fake*

Counterfeit/A worthless imitation passed off as genuine.

Flim Flam*

Deception or fraud.

Franchise*

The right to be and exercise the powers of a corporation.

Fraud*

Deceit or trickery. The intentional perversion of truth in order to induce another to part with something of value.

Grifter*

A person who obtains money by swindling or cheating.

Holder in Due Course

A third party, such as a bank or finance company, that has purchased a note or contract from the seller or supplier. The bank or finance company has no responsibility for the acts between seller and buyer be they fraudulent or otherwise. The holder in due course doctrine is barred by statute in a few States.

Nailed to the Floor

A sales technique whereby a particularly attractive item of merchandise is displayed or advertised but which cannot be sold. It merely serves to entice the buyer into the marketplace. Beware of the salesman who permits the sale of an item that is nailed to the floor.

Par Selling

A sales practice wherein the salesman is allowed to keep a certain percentage above a certain (par) price.

Peculation*

Embezzlement.

Pitchman

Sometimes used to describe a person who hawks wares, quite often used in an unsavory sense.

Puffing

A sales technique wherein exaggerated claims are made for the item that is for sale.

Quack*

A pretender to medical skill. A charlatan.

Referral Selling

A plan wherein the buyer is told he can earn commissions by referring other persons to the seller and thereby get the item free.

Shill*

One who acts as a decoy, as for a pitchman or gambler.

*Definitions taken from Webster's New Collegiate Dictionary.

PRESENTATION SCRIPTMeeting No. 4
(Two Periods)COMMUNITY/POLICE RELATIONS(Aims)

During this presentation we will tell you about the various programs, plans, actions, and activities that will help your local law enforcement officers.

(Motivation)

Law enforcement officers have always said, and it has been widely accepted, that crime cannot be overcome without the support of the community. This does not require a great amount of effort and it requires no money. All it requires is your interest--your concern for yourself and your fellow person. Your home can be made more secure and your life less fearful if you care.

(Introduction to Subject)

During this presentation we will discuss various Community/Police programs. They will be:

-Crime Check--or it may have another name in your community. This program is sponsored by the International Association of Chiefs of Police and your local police department. A parallel and similar program is Neighborhood Watch which is sponsored by the National Sheriff's Association and the local offices of the sheriffs. This program, in effect, has you use your eyes and ears for the fight against crime. It tells you the things you should report to the police.
-The Property Identification Program is a plan wherein you voluntarily mark all your property that might be stolen. We will tell you how this helps you and how it helps your law enforcement officers.
-Closely aligned with the aforementioned is the property inventory. A means of knowing what you have so that you will be better able to accurately report theft or burglary losses. It also will help you in fire losses.
-We will also suggest ways in which you can help your neighbors in making your area more secure.
-We will deal briefly with witness perception--how you can make better reports to the police should you witness a crime or be the victim of a crime.

-And we will talk about street lighting programs.
The benefits of better street and private lighting.
-We will show you samples of Home Security Check-Off
Lists, Vacation Check-Off Lists, and Home Security
Inspection Forms.
-We will also explain the advantages of Security
Inspection Teams, Hardware and Alarm Committees,
and an example of a Citizens' Patrol.

(Subject)

-No program involving Community/Police relations can be
successful unless it is undertaken with the full
cooperation of your local law enforcement agency and
your local political leaders.
-If you decide to participate in any of these local
programs, you must first determine how it can be done
with their cooperation and, quite often, with their
guidance.
-Few of these programs require money on your part.
-All require some degree of involvement on your part.

(Publicity)

-If you decide to initiate any of the following action
programs, you may find it advisable to obtain publicity
through the various media. Many groups have found that
newspapers, radio stations, and TV stations cheerfully
publicize these programs as a part of their public ser-
vice to the community. You may think of other ways to
achieve additional publicity.
-In the following we will consider briefly some ways in
which you can become involved to improve your community
and to help yourself.

CRIME CHECK
NEIGHBORHOOD WATCH

-The essential element of these programs is to secure the help of the people to report unusual or suspicious incidents, as well as to report any crimes that may occur in their view.
-Crime Check is a program of the International Association of Chiefs of Police.
-Neighborhood Watch is a program of the National Sheriff's Association.
-There are other similar programs that may have names such as Crime Alert, Crime Stop, Crime Watch, or the like.
-Contact your local law enforcement chief and get the information on your local program. If there is no well-organized program in operation, you may want to work with the local officials to establish one.
-Many localities have special telephone numbers that are easy to remember and that require no money to call through a public telephone.
-Many law enforcement agencies do not require you to identify yourself if you are reporting unusual or suspicious incidents.
-You should report what you SEE.....

Examples:

A stranger carrying TV's, household items, or similar unusual activities.

Strange persons loitering around your neighbor's house while the neighbor is away.

Strange automobiles that are cruising the neighborhood with no apparent business.

Broken or open windows or doors.

Persons walking down the street repeatedly peering into parked cars.

Anyone removing parts of a car, such as radios, batteries, and license plates when this person does not appear to be the owner.

-You should report what you HEAR.....

Examples:

Screams or sounds of confusion and distress.

Loud and unusual noises or explosions.

PERSONAL PROPERTY IDENTIFICATIONHistory

Most sources credit the chief of police of Monterey Park, California, with starting this property marking program in 1963.

.....The program was so successful in reducing burglaries that it has spread throughout the country.

WHY

.....The program has four major advantages. Property marked in accordance with these program guides:

Deters Crime

Thieves and burglars are less likely to steal an item that can be positively identified and that will be difficult to sell.

Positive Identification

The owner of stolen property can easily be located through existing records.

Helps Criminal Prosecution

The arresting officers can more readily use the stolen property in pursuing the case through the courts.

Aids Recovery

Stolen property is more likely to be returned to the owner.

WHAT

.....This program is a system wherein you enscribe upon certain items of personal property a number that can readily be traced to you.

.....You will be told by your law enforcement officers which number to use. Quite often it is the number on your automobile operator's permit. If you do not have such a permit, then they will assign a number to you. An advantage of this system is this number is on record and you can easily be identified from this number.

HOW

.....Your local law enforcement agency will tell you which number you should use in marking your property.

.....An electric etching tool is used to mark your property with a permanent number that positively identifies you with the item.

-The electric etching tool is not expensive. The money to buy these tools is often secured from a sponsoring civic organization or from the local law enforcement agency.
-The tools are usually placed in convenient locations such as libraries, fire stations, police stations, or other places where they are readily available to the members of the community.
-The tools are loaned free of charge for short periods of time.
-After your property has been marked, a window or door sticker is provided to place upon your residence. This is placed in a conspicuous location to serve as a deterrent to burglars and thieves. The sticker states that all property has been marked.
-This marking of property for positive identification is easy and it is effective.
-Statistics have clearly shown that when this program is carried out in accordance with the instructions of your local law enforcement officers there has been a sizable reduction in burglaries and stolen property sales.
-Property that is difficult to mark such as jewelry, silver, and the like can be photographed. A cheap snapshot of the items will serve the purpose of making a satisfactory record.
-The lawful transfer of such property can be handled easily. When you sell or give away such property, the old identification number SHOULD NOT be erased. The new owner should put his number on the item so that BOTH numbers are clearly legible.
-Publicity for these programs is usually easy to obtain. Again, with the cooperation of your local political leaders and your local law enforcement officials, publicity is usually easy to get. The more publicity generated the greater it serves as a deterrent to burglars and thieves.
-Again, this program is easy to carry out. It has proved to be effective in many locations where it has been in operation for a long time.

PROPERTY INVENTORY PROGRAM

-Making an inventory of your personal and household property serves an important purpose should you have a burglary, theft, or fire loss.
-So often we cannot recall with accuracy what is missing and certainly cannot recall information such as serial numbers and other details that may be needed.
-In any of the losses mentioned, this information is vital.
-Attached is a sample form that could be used to record this information.
-Many consider making this record a tedious and time-consuming task that is easily put off. For this reason, some positive action should be taken to assure the completion of this record. One acceptable method is for a group to decide to perform this task by a certain date that has been agreed upon by the majority. This tends to motivate the group to accomplish this chore so as to be able to report back its successful execution by the agreed-upon date.
-After the record has been made, be sure to keep it in a secure place such as a safe deposit box.

LIST OF PROPERTY

	:	Item & Make	:	Color	:	License Number	:	Personal Ident. No.	:	Original Cost
	:		:		:		:		:	
Automobile	:		:		:		:		:	
Bicycle	:		:		:		:		:	
Lawn Mower	:		:		:		:		:	
Motorcycle	:		:		:		:		:	
Scooter	:		:		:		:		:	
	:		:		:		:		:	
	:	Item & Make	:	Serial No.	:	Personal Ident. No.	:	Original Cost	:	
	:		:		:		:		:	
Radio	:		:		:		:		:	
Stereo	:		:		:		:		:	
Tape Recorder	:		:		:		:		:	
Television	:		:		:		:		:	
	:		:		:		:		:	
	:	Item & Make	:	Serial No.	:	Personal Ident. No.	:	Original Cost	:	
	:		:		:		:		:	
Power Tools	:		:		:		:		:	
Special	:		:		:		:		:	
Equipment	:		:		:		:		:	
	:		:		:		:		:	
	:	Item & Make	:	Serial No.	:	Personal Ident. No.	:	Original Cost	:	
	:		:		:		:		:	
Dryer	:		:		:		:		:	
Washer	:		:		:		:		:	
Other	:		:		:		:		:	
Appliances	:		:		:		:		:	
	:		:		:		:		:	
	:	Item & Make	:	Serial No.	:	Personal Ident. No.	:	Original Cost	:	
	:		:		:		:		:	
Binoculars	:		:		:		:		:	
Camera	:		:		:		:		:	
Jewelry	:		:		:		:		:	
Sewing Machine	:		:		:		:		:	
Sporting Goods	:		:		:		:		:	
Typewriter	:		:		:		:		:	
Watches	:		:		:		:		:	
	:		:		:		:		:	
	:	Make	:	Serial Number	:	Caliber	:	Personal Ident. No.	:	Original Cost
	:		:		:		:		:	
Guns	:		:		:		:		:	
	:		:		:		:		:	

NEIGHBORHOOD MUTUAL PROTECTION ACTIVITIES

-So often our apathy.....
 Our feeling that nothing can be done.....
 Our feeling of entrapment in complex situations.....
 Tend to paralyze us into inaction.
-We sometimes feel that solutions can be achieved only with
 great amounts of money and a complex organization.
-This is not always the case.
-Some of the most effective crime-reduction efforts have been
 accomplished with little organization, small expenditures of
 time and NO MONEY.
-We have lost sight of one of our greatest assets.....something
 well-known to all of our pioneer forebears.....a reliance and
 dependence on one another.
-Let us cite one small example that we observed in a two-block
 area of one of our major cities.
-This area had row houses, about three stories on the average,
 with small front yards, shrubbery, and tree-lined streets.
 Street assaults, muggings, harassment of lone women, and
 burglaries incensed the residents in this area. They had a
 block party one night, decided on some simple rules of pro-
 cedure, and decided not to have any formal organization. The
 rules were that all residents would observe the streets as
 frequently as convenient and be alert to any unusual activity.
 All residents would assure that doors and windows had reasonably
 secure locks and that these would be locked during periods when
 they were unoccupied. Strangers in the neighborhood would be
 observed. Automobiles cruising the neighborhood with no apparent
 business would have their license plates noted. Those women who
 worked and came home alone at night would always have a whistle
 handy for immediate use. It was but a short time when these
 simple, cost-free procedures began to pay off. A car with two
 young men slowed down one night and pulled alongside a woman
 walking from the bus stop to her home. She blew her whistle
 long and loud and within seconds a dozen eyes were observing
 her and two residents ran out into the street at the sound of
 the whistle. The young men sped off in their car. Within
 three weeks a burglar was apprehended in a house by the police
 after someone had called in a report of a suspicious person in
 the alley.
-This kind of neighborhood cooperation and awareness will help
 you reduce the crime in your neighborhood.
-It requires no money.
-It requires no organization.
-It requires very little time.
-It DOES REQUIRE THAT YOU CARE ABOUT YOUR NEIGHBOR.

LIGHTING

.....Light has long been used as a major deterrent of many forms of crime.

.....A police chief in one of our major cities once said that a good street light is as valuable as a good policeman and is a lot cheaper. This may have been said with obvious exaggeration, but there was no intention to deceive as to the value of good street lighting.

.....Private lighting of your residence is equally important and not necessarily expensive.

.....We sometimes fail to realize the other benefits derived from good lighting. It can:

Beautify the area, if done with taste and expertise.
How many times have you seen buildings, statues, and other objects enhanced by tastefully arranged lighting?

Greatly increase traffic safety. The statistics on this clearly demonstrate the value of lighting.

Improve pedestrian safety.

Increase business in those commercial areas where the lighting has been poor.

Aid in performing work, such as that of the public servants who must work during hours of darkness, as well as repairmen and maintenance men.

Decrease the consumption of electricity at the same time giving better light.

.....Many cities throughout the nation have started street lighting campaigns.

.....If you feel your community needs better lighting, you should organize a small group to begin a lighting campaign.

.....Do not be discouraged if at first you are but a few. A small rural women's club in Georgia started a campaign that spread throughout the entire State.

.....As in all projects of this nature, you need the support of your local political leaders.

.....It is likely that the major elements of a successful effort will be the support of your local political leaders, your police chief, and your electrical power people.

.....The first step logically would be to determine the nature and extent of your problem. This could be determined by a survey conducted by your power company in consultation with other persons such as the street and highway people in your local government.

.....After finding out what your lighting problem is, your group should seek the continued expert advice of the political leaders, their civil employees, and the power company to determine what has to be done to improve the lighting. As you work, questions will surface. Such as:

How much will it cost?

What should be done first?

How can we establish a timetable that will include reasonable and achievable goals?

How can we get general public support?

How should we publicize the effort to achieve public support?

.....There have been many examples of astonishing success as the result of just small groups of women who have taken a civic interest in improving the street lighting in their communities.

.....We will give you additional information if you need it. Write your National Headquarters.

WITNESSESPerception

-If you are a witness to a crime, your responsibilities are likely to fall into two phases.
-The first is what you tell the police.
-The next may be what you tell them down at the courthouse..... if you are called upon to testify at a trial.
-Of course, your law enforcement officers would like to have a complete and accurate description of everything you saw-- everything you witnessed.
-Very often this is not easy to do.
-So often a witness, whether he is directly involved in the crime or not, is subjected to a flurry of fast-moving events by strangers under circumstances in which there may be elements of danger, poor light, distractions, and.....what else?
-More often than not, the conditions are far less than ideal.
-So what should you try to do?
-Try to remember as much as you can but, above all, when identifying a person or a vehicle, try to remember one or two.....or as many as you can.....really good identifying features.
-As an example, place yourself in the shoes of the police. Which of the following would make the better identification of a suspect who has fled and for whom they are now searching?
-A white male, medium build, about 5' 10" to 6', wearing a brown coat, black trousers and.....yes...you remembered when he ran he had white socks. You could see his white socks.....and there was another feature that made him very distinct.....he had only one arm.....the left sleeve of his coat was stuck into the left pocket. That makes a pretty good description, does it not?
-But what does the officer have to go on when the description given him is little more than that you saw a man in a brown coat running down the street?
-As we have said before, furnishing a good description of a subject to the police is not always easy.
-But do the best you can and try to be as observant as you can.
-One method of estimating height is the eye-to-eye method. If your eyes and his eyes are the same height, you can guess he is about the same height as you. If your eyes are about level with his Adam's apple, you have got to add a few inches.

-Try to remember unusual things.
-Is the clothing neat or new or old or dirty or sloppy or what?
-Did the person talk with an accent or in a foreign language?
-Were nicknames or distinctive expressions used?
-The persons may have referred to all women as sisters and all men as jokers. Distinctive expressions such as these should be reported.
-A similar technique should be used in describing an automobile.
-If you can get the license number or a part of it.....get as much as you can and write it down immediately. If you do not have a means of writing it, keep repeating the information.
-Try to get a good identifying feature such as a unique dent or something that is different about that particular automobile.
-Whatever you have observed, you should write it down as soon as possible.
-And you should convey it to the police as soon as possible.

Testimony

-If you are called upon to testify at a hearing or a trial, you should try to remember a few guidelines.
-Speak so you can be heard and understood. Speak loudly enough to be heard. Speak clearly enough to be understood.
-Try to answer in your own way, factually and briefly.
-If you do not fully understand the question, ask that the question be repeated or explained, whatever is necessary for you to understand it.
-Guard against losing your temper, even though some things may irk you or puzzle you.
-Be sure you tell about only those things you saw. Do not venture into guessing about anything.
-Do not try to be a comedian. Trying to be funny in the witness chair is likely to lead to your embarrassment or, worse, to a contempt citation.
-Avoid arguing with opposing counsel. Even though you may feel you have provocation, do not engage in any argumentative tactics with the opposing counsel.

-Being a good witness can be quite difficult. Remember lawyers spend years in the schoolroom and in the courtroom mastering their art. It will not be easy for you to try to best them. Tell your story plainly, honestly, forthrightly, and to the best of your ability.
-It is not our purpose here to instruct you as a witness. We are merely giving you a few practical hints. You must rely upon legal counsel for more complete advice and for guidance.

VACATION CHECK-OFF LIST

NOTE: Your greatest risk of being burglarized is likely to be during those periods of prolonged absences.

Check

1. Notify your local law enforcement agency of your absence.... []
2. Lock all doors..... []
3. Lock all windows..... []
4. Lock garage door..... []
5. Secure items such as jewelry, furs, cameras, credit cards, checkbooks, etc..... []
6. Cancel all deliveries such as newspapers, milk, etc..... []
7. Have mail held at post office or forwarded or picked up..... []
8. Have someone pick up handbills and throwaways..... []
9. Place a light or two on automatic timers..... []
10. Adjust blinds and draperies to make house appear to be occupied..... []
11. Never leave note on door which may indicate your absence.... []
12. Arrange to have lawn cut and yard work done..... []
13. Arrange for a friend to inspect your property regularly..... []
14. Ask neighbors not to tell strangers such as salesmen, repairmen, etc., of your absence..... []
15. Do not advertise your absence in the local social notices... []
16. Remove ladders from sight and secure them in locked places.. []
17. Don't "hide" keys under doormats, flowerpots, or similar places..... []
18. Check basement windows, garage windows, and other openings.. []

NOTE: Upon return, if there are any signs of a burglary, such as a broken windowpane or forced door, call your police before entering. Do not take the chance of confronting a burglar inside.

SECURITY INSPECTION TEAMPurpose

-A National Institute of Law Enforcement and Criminal Justice study entitled PATTERNS OF BURGLARY concluded in 1972 that:

The most important recommendation that we can make is that the ordinary citizen realize that, by a series of simple, straightforward acts, he can affect the likelihood of his being burglarized. Our evidence indicates that a substantial number of burglaries is the product of citizen carelessness providing an easy opportunity for a thief. Our prediction is that simple acts, of the kind we shall mention, because they affect characteristics with a high frequency among burglary offenses, could have a marked effect on counteracting the completion of such offenses, if widely utilized.

-The purpose of a SECURITY INSPECTION TEAM is to develop a level of expertise among a group of interested volunteers that will enable that group to make simple, straightforward recommendations to those members who desire a residential security inspection.
-Some localities have law enforcement officers who make these inspections upon request.

Formation

-If your group has determined that such a team can serve a useful purpose to your members, form a team of volunteers.
-Consult your local law enforcement agency to determine if they have an interest in cooperating with this venture.

Duties

-Determine the duties of the team based upon the following information and upon your initial experiences making inspections.
-Consider developing sources for installation and repair work. In many areas it is difficult to obtain persons to do minor installation work. This may be an opportunity to create an income-producing activity that will render a valuable service to homeowners.
-Consult with local locksmiths, hardware dealers, and alarm companies to develop knowledge of security devices and hardware.

-Devise an inspection form that meets the needs of your team.

Considerations

-Remember the four D's:

DENY
DETER
DELAY
DETECT

-Anything you can do to effect these anti-burglary principles will increase the security level of the protected area.
-Complete the home security check-off list with the person requesting the inspection. Discuss ways to DENY, DETER, DELAY, OR DETECT.
-Examine exterior doors to determine if they have spring-latch locks. If the latch can be forced back by exerting force against the beveled face, then a burglar can open the door by inserting a thin plastic strip between the door and the jamb and thereby force back the latch. Consider the installation of dead bolts or throw bolts.
-Are all windows equipped with locking devices? Consider installation of some form of device on those windows that may afford access to a burglar.
-Can a burglar break a door glass and thereby reach inside to open the door? Consider the installation of a double cylinder lock.
-Do you have a sliding glass door? Examine the lock and determine if it is substantial. Can the door be lifted off the tracks from the outside? Consider an additional lock.
-Is there a possibility that persons have access to your house keys other than members of the family? If so, change cylinders in locks.
-Do other openings, such as basement vents, basement windows, garage windows, and roof openings have a means of locking?
-Do you have windows or other openings that are close to utility poles, trees, fire escapes? Examine to determine if these openings could be used by a burglar to gain entrance. Consider a means of protecting these openings.
-Are ladders accessible for burglars to use? Keep ladder out of sight and inside locked area.

-Do exterior doors have hinge pins that can be driven out so as to allow door to be opened from the hinged side?

Improvised and Inexpensive Security Devices

-There are many ways to increase security at a low cost.
-The use of a 2 x 4 across doors or openings in locations where appearances are not a factor.
-The use of steel pins (cut from the shank of large nails) in wooden frame windows.
-The use of hasps and padlocks on openings where appearances are not a factor.
-The use of pipes or grilles over basement openings or windows.
-The use of sticks jammed in such a way as to prevent the opening of double-hung windows.
-The use of inexpensive throw bolts or slide bolts.
-The use of a stick cut to drop in the tracks of sliding glass doors. Even though the door can be lifted off the tracks from outside, or even though the stick may be flipped out of the tracks by a long, thin screwdriver, this additional precaution is so cheap it is worth consideration.

NOTE

-IMPORTANT--ALWAYS ASSURE EASY ESCAPE IN CASE OF FIRE!

ALARM AND HARDWARE COMMITTEE

-If you form a Security Inspection Team and become active in security inspections, you will soon discover the variety and diversity of alarms and hardware.
-This may lead you to consider creating a special group to become familiar with this subject. This is an interesting subject and you should not have difficulty finding members who would like to acquire knowledge in this area. You may be fortunate enough to have a person in your group who has a background of experience that would make that person a leader in this activity.
-The function of this committee would be to make inquiries into the alarm and hardware market and develop knowledge or sources of information that would permit recommendations to be made to the member requesting a security inspection.
-We will mention but a few facts about this subject. Detailed information must come from sources such as installers, dealers, law enforcement officers, manufacturers, and others that will come to your attention should you become involved in this activity.
-Alarms can be proprietary or central station; that is, they can sound an alarm locally or transmit an alarm to a central station such as the police department or security service.
-Alarm systems can be battery powered and operate as independent units, or they can be a part of a wired system using house current for energy.
-Alarm systems can:
 - Turn on lights
 - Sound an audible alarm
 - Transmit a silent alarm
 - Automatically dial selected telephone numbers, such as doctors, friends, and give a pre-recorded message
 - Photograph the protected area, as in banks, and
 - Send an alarm to the local police or your security service
-Alarms can be designed for burglary, fire, smoke, special situations, emergencies, and testing. Special situations might be warning you of water in the cellar or freezing pipes, and for emergencies such as sending alarms to selected persons should you have a health problem. Systems can do any or all of these things.

-There are many types of barrier alarms, as for doors, that can be independent units or parts of a system. They can be as simple as a battery-powered, easily-installed combination lock and alarm to protect the front and other selected exterior doors.
-There are alarms, such as a screen, that if cut or torn transmit an alarm.
-Barrier alarms can be based on the use of invisible light. Infrared light beams, invisible to the eye, can be used to project a beam across a door or room or other protected area. An alarm sounds should anyone break the beam by walking through it.
-There are simple portable devices that are battery operated and can, as an example, be placed on a table and pointed toward a light source, such as a table lamp across the room. Should anyone walk between the light and the alarm device, an alarm would be sounded.
-There are "space" alarms that protect areas, such as a room, by microwave or ultrasonic sound waves. Any disturbance or intrusion into the protected area would initiate an alarm.
-There are pressure mats and pressure tapes that sound an alarm should anyone walk on them. These are usually hidden under floor coverings.
-There are numerous switches used to initiate an alarm, such as magnetic switches, plunger switches, pressure switches, vibration switches, tilt switches, micro-switches, normally-open and normally-closed switches.
-Security hardware and hardware that gives you greater protection than that which is commonly used cover a vast area, both in variety and function.
-A relatively modest amount of money and a small smount of time spent in the investigation of alarms and hardware will soon give you enough information to be able to greatly increase residential security at a reasonable cost. Many devices are easily installed.
-You will be greatly satisfied with your accomplishments should you undertake this task.

HOME SECURITY INSPECTION FORM
HOME SECURITY CHECK-OFF LIST

These two forms can be combined if you so desire. We will discuss both and encourage you to make your own form based upon the suggestions that have been given in this session and based upon the information presented here.

The HOME SECURITY INSPECTION FORM should be used as a guide by SECURITY INSPECTION TEAMS. It should be so compiled as to lead the team through an orderly inspection as well as to serve to remind them of what should be inspected.

The HOME SECURITY CHECK-OFF LIST can be used by the home resident as a means of proceeding through an orderly process of determining if certain fundamental security practices are being followed.

Most burglars enter through a door and nearly all burglaries are committed by entry through doors or windows. This does not surprise anyone. These should then receive your greatest attention.

Start at the main entrance and examine each door:

- Can the door be opened by slipping the latch?
- Can the door be opened by breaking out a pane of glass and then opened by reaching inside?
- Are there other weaknesses in the door?

Sliding Glass Doors

- Can your sliding glass doors be securely closed?

Windows

- Follow the same procedure in checking the windows.
- Does the window have a secure lock?
- Can it be locked partially open if the window is sometimes opened for ventilation?
- If there is a window air conditioner in the window, is the air conditioner secured to the frame?
- Is the screen normally kept latched or secured in place?
- Are there any other weaknesses?

Other Openings

- Follow the same procedure in checking other openings.
- Are there roof access doors, ventilation openings, or weak points in the structure that would allow easy access from the outside?
- Can upper openings or porch roofs be easily reached by utility poles or trees?

Lighting

Should there be additional exterior lighting?
Are all sides well illuminated to prevent
concealment?

Shrubbery

Does shrubbery afford places of concealment for
someone to hide or behind which someone can
work to gain entrance?

NOTE: ASSURE SEVERAL ESCAPE ROUTES ARE AVAILABLE IN
CASE OF FIRE.

The HOME SECURITY CHECK-OFF LIST

This is a means whereby the resident (or the Inspection Team) determines if security precautions are being followed:

	Yes	No
1. Have your doors, windows, and other openings been inspected to determine if the locking devices are secure?		
2. When you leave the house vacant, do you always lock the doors and windows?		
3. Does the house look "lived in" during your absence?		
4. Do you leave several lights on when you are absent during the evening?		
5. Are ladders secured and out of sight?		
6. Are valuable wheeled items, such as bicycles and lawn mowers, out of sight and secured?		
7. Do you "hide" your house keys under flower pots or in the mail box?		
8. Do you leave notes on your door when you are out?		
9. Do you have a safe deposit box for securing valuables?		
10. Have you devised methods whereby only very small amounts of money are kept in the house?		
11. Do you lock up your checkbook?		
12. Have you made a record of credit cards or other papers that can be identified by number?		
13. Have you marked your pilferable property with your personal ID mark?		
14. Have you inventoried and recorded your valuables?		

CITIZENS' PATROLS

A number of localities have experimented with Citizens' Patrols with varying degrees of success. Some have been abandoned as worthless. There is considerable potential in these patrols and they should be given a trial if you have certain factors in your crime problem that are subject to reduction through the use of these patrols.

It is essential in any effort of this nature to have the full support and cooperation of your local political leaders and of your local law enforcement officials. It is impossible to have any success without this support.

You should first determine what your crime problem is and how it can be reduced by patrols. A meeting between the citizen group and the political and law enforcement leaders would help you here.

In considering the composition of the patrols, you must not eliminate the possibility of the effectiveness of some teenage patrols.

The duties of the patrol will be largely determined by the nature of your problem. In other words, if you have had occasions when women have been harassed upon returning home at night, you may decide to concentrate on the hours that have been the most dangerous and the area that has reported the most complaints. This could be, as an example, between a bus stop and a housing project. Some patrols have operated only during the early evening hours and have served to report a variety of things to the police. The police have instructed these patrols in what to report and how to report.

You, as an operating unit in support of your police, can develop the most effective means of operating and the most effective organization.

PLANNING GUIDE

Program Title.....Crime Prevention

PLANNINGThe Program Chairman

To initiate the Crime Prevention Program, a chapter or unit should select an interested member to act as Program Chairman. The Program Chairman has the important role of coordinating the program.

In the planning stage, the Program Chairman will want to go over the program script to determine how to achieve the most effective form of presentation.

Various methods of program presentation should be considered in an effort to achieve higher levels of audience interest, subject comprehension and retention. Consider the possibility of using panels, discussions, role-playing and various other combinations.

Methods of presentation will be limited by such things as the availability of qualified resource speakers, physical facilities, time and other local factors.

Good judgment should be used in deciding how to present the program, considering these local variables.

Resource Person

Early in the planning stages the Program Chairman should obtain the services of a resource person for each session.

Most law enforcement agencies have a member who is qualified in crime prevention activities. The graduates of the National Crime Prevention Institute at the University of Louisville in Kentucky are good resource persons for this program.

If you obtain the services of a crime prevention officer from your local law enforcement agency, it is likely that he will provide a projector, screen and other aids.

The resource person should be given the program script well in advance of the scheduled session.

The program script should be used as a basis for the presentation or as a guide. IT IS RECOMMENDED THAT THE RESOURCE PERSON ADAPT THE PRESENTATION TO LOCAL CONDITIONS.

One of the major objectives is to reduce the fear of those in the audience. We know from wide experience that the chances of being victimized can be greatly reduced. Knowing this, the resource person should be able to increase confidence and reduce fear.

THE PRESENTATION

Factors to Consider

Assure that needed equipment, such as a projector, is on hand and ready to use.

Begin the presentation as punctually as possible.

Assure that the speaker can be heard.

Repeat questions so that all present can hear the questions asked.

Guard against wasting time of the audience.

Monitor temperature for comfort.

Arrange for comfortable seating.

Have proper lighting.

METHODS OF PRESENTATION

Lecture

The lecture form of presentation is one of the most commonly used methods. The ability of the lecturer will be the most important factor in achieving a successful presentation.

Discussion

This method has the advantage of allowing the audience to participate in the presentation. The audience is allowed to make known its needs, desires, and views.

A discussion must be controlled as to time and scope.

Demonstration

Some subjects lend themselves particularly well to the demonstration method.

Example: If you are presenting the subject of door locks or alarms, demonstrating the actual hardware is one of the best methods.

Panels

Panels are an effective method for presenting a variety of individual views.

This method relieves monotony.

Monitoring of a panel is recommended so as to control time and scope.

Role Playing

If done well, role playing is one of the most effective methods of presentation. Even though the audience does not physically participate, they become more involved in the presentation.

Some planning and imagination can produce interesting little dramas on the most ordinary subjects.

Example: Law enforcement officers recommend that upon returning home at night you should walk briskly to your door, have your keys ready, and enter promptly. This reduces your exposure and reduces the opportunity of the potential criminal. Think of the ways this could be acted out. In the wrong way, the actor ambles up to the door, cannot find the key, drops all manner of things, and finally gets halfway to the door as the mugger approaches from behind. In the right way, the actor walks briskly to the door, inserts the key, opens the door, and enters. The door is closed as the mugger slams his nose into the locked door.

Questions

This method is a very useful means of interjecting variety into a presentation. It can be used to:

- Create interest
- Maintain interest
- Focus attention
- Review
- Summarize

Types of questions can be:

- Factual
- Interest-stimulating
- Thought-provoking

Never use:

- Tricky questions
- Ambiguous questions
- Pointless questions

Questions should always be:

- Clear
- Within capability of audience

Points to Observe

From the outset the speaker should try to establish rapport with the audience by whatever means thought effective. Try to project person-to-person eye and voice contact with individual members of the audience.

Speak clearly, speak loudly and use language that can be understood.

Use actions, gestures, and variations in voice to emphasize, to provide variety and to avoid monotony.

Strive to create interest, provoke thought and achieve audience acceptance.

Motivate the audience to want to be informed by:

- Showing and demonstrating need;

- Example: Why should I want to know this?
How will it make my life safer
and more secure?

Arousing curiosity;

Example: Could it happen to me? How are persons taken in or victimized?

Offering rewards:

Example: By practicing the precautions presented in the program, one can reduce the risk of becoming a victim.

Gaining satisfaction;

Example: Audience is better prepared to confront various dangerous or deceptive situations as a result of information gained in the program.

PRESENTATION PLAN

Program Title.....Crime Prevention
Film
Lecture/Discussion
Questions/Answers

Subjects

The Crime Prevention Program covers four subjects:
Street Crime, Burglary, Criminal Fraud and Community/Police Relations.

Objectives

To present practical experience-based advice on how to reduce the risk of being victimized.

To serve the audience by decreasing imagined fears.

To motivate the audience to want to learn more about self-protective measures.

To encourage the audience to engage in cooperative community/police activities.

Materials Needed

Films will be needed for the Street Crime, Burglary and Criminal Fraud sessions.

No film is needed for the Community/Police session.

16 mm film projector

Screen

Resource Persons

You are encouraged to secure the services of your local Crime Prevention law enforcement officer. Let him review the program script AND ADAPT IT TO LOCAL CONDITIONS. As an example, your locality may not have a street crime problem. Your Crime Prevention officer can then adapt this first session to your local needs.

FILM SUMMARIESMeeting No. I.....Street CrimeFilm Title.....Walk Without Fear
16 mm - Color - 20 Minutes

The film opens with a police chief addressing a civic group. It then portrays recommended actions and practices that can reduce your chances of being victimized by street criminals. As an example, the way a purse or handbag is carried may determine whether or not the bag will be snatched. The film suggests precautions that should be taken on the street, on buses, in cars and in public places. The question of carrying weapons is discussed. The final message is that crime prevention is the best practice. Avoid crime by not giving the criminal an opportunity.

The film was made with the technical assistance of the International Association of Chiefs of Police.

Meeting No. II.....BurglaryFilm Title.....Invitations to Burglary
16 mm - Color - 22 Minutes

This film is directed toward those persons residing in private homes or apartments; it is not intended to apply to businesses or other commercial establishments. The film describes how persons frequently and unwittingly invite a burglar to choose their homes. It explains various security devices and gives advice on how to increase the security of a residence. The film attempts to motivate the audience to recognize and eliminate those invitations that are so clearly evident to the burglar. The advice is practical and realistic.

The film is narrated by Raymond Burr.

Meeting No. III.....Fraud/BuncoFilm Title.....On Guard/Bunco
16 mm - Color - 27 Minutes

This film portrays four schemes that are commonly used to defraud victims. The four episodes cover the BANK EXAMINER swindle, contracts, home repairs and the infamous PIGEON DROP. The film then reenacts each episode and depicts how the victims should have reacted to each situation.

The CHAIRMAN. Mr. Martin, let me ask you one thing: Do you have any information to indicate that in some projects elderly persons are being discriminated against in favor of taking younger people?

Mr. MARTIN. Discriminated against in the sense of taking younger persons instead of the elderly?

The CHAIRMAN. Yes.

Mr. MARTIN. Well, I don't think we have sensed discrimination of that kind. Of course, if we are talking about a section 202 problem or program, it is specifically designed for the elderly.

The CHAIRMAN. No; I am speaking of housing in general.

Mr. MARTIN. I would not say that the elderly are being discriminated against, but the problem has been that there has not been sufficient funding to enable the persons who are interested in developing such housing to go ahead with it, to get moving on it.

We are held up by the moratorium, and we are held up by the fact that the administration doesn't like what is happening under section 236 and wouldn't operate under section 202, and the whole thing has tended to grind us more and more slowly.

The CHAIRMAN. All right. Thank you very much, all of you; we appreciate your presentation.

The next witness is H. Ted Olson, executive vice president of the American Association of Homes for the Aging, accompanied by Mr. Jacob Reingold, executive director, Hebrew Home for the Aged, Riverdale, N.Y.

We are glad to have both of you, and we will be pleased to hear from you.

STATEMENT OF H. TED OLSON, EXECUTIVE VICE PRESIDENT, AMERICAN ASSOCIATION OF HOMES FOR THE AGING; ACCOMPANIED BY JACOB REINGOLD, EXECUTIVE DIRECTOR, HEBREW HOME FOR THE AGED, RIVERDALE, N.Y.

Mr. OLSON. Thank you, Mr. Chairman, and members of this committee. I welcome the opportunity to appear before you to testify on housing for the elderly.

With me here today, representing the American Association of Homes for the Aging is Jacob Reingold, executive director for the Hebrew Home for the Aged at Riverdale, N.Y. He is also a member of our executive committee and is the immediate past president of the National Association of Jewish Homes for Aged.

The American Association of Homes for the Aging is an organization comprised of nonprofit sponsors of housing for the elderly. Our members are both purely residential as well as health-care oriented. They are largely church-sponsored, although some are sponsored by unions, fraternal organizations, and retired teacher groups.

At the outset, we would like to commend Senator Williams for once again showing his deep concern for, and interest in, housing for the elderly, by sponsoring S. 2179, S. 2180, S. 2181, and S. 2185, which are the subject of today's hearing.

Mr. Chairman, the backdrop of this hearing is the moratorium placed on housing construction by the administration in January of this year. Both the section 236 interest subsidy program and the public housing program—which in recent years have provided the bulk of

housing units for the elderly—are among the Federal housing programs which have been suspended. Moreover, the section 202 direct loan program, established in 1959 to provide specialized housing for the elderly, was phased out several years ago. Thus, during a time of great and growing need among our older citizens for housing, we have come to a virtual standstill.

As a recent survey taken by the Senate Subcommittee on Housing for the elderly pointed out: one elderly person is on a waiting list for every unit of specialized housing for the elderly that is currently occupied. In addition, the vast majority of homes in our association have long waiting lists—some as many as 2, 3, or 4 or more years long.

Given the obviously great demand for housing among older people, our association believes that the moratorium should be lifted as soon as possible so that we can get on with the job of meeting housing needs. Furthermore, at a time when the role of the Federal Government itself in the field of housing is being reevaluated, we wish to reaffirm our belief that a major Federal commitment is essential if we are to meet the housing needs of older citizens. This commitment is as fundamental and as important as our national commitment to such well-established institutions as the social security program or the interstate highway program.

As both Congress and the administration work concurrently, if not together, toward the creation of a new housing program, the AAHA would urge that several general points be borne in mind.

First, it should be emphasized that older people, like other age groups, are highly heterogeneous, and, therefore, whatever housing policy is developed should be flexible enough to respond to widely differing lifestyles among the elderly. If this point seems obvious, past policies have not always reflected a clear appreciation of it, with unfortunate results. Some people over 65 intensely dislike high rises; others would not live in any other type of structure. Some people over 65 prefer to live off by themselves, away from younger people; many others prefer living near younger families with children. Some cannot abide living anywhere near a health-related facility; others find a measure of security in their proximity to a health-related institution. The point here is that Federal housing policy should recognize the wide differences among older people.

Second, having stressed that the elderly as a group represent a variety of types of people with widely differing lifestyles, we would nonetheless like to point out the existence of certain characteristics which tend to distinguish them from younger age groups, and which illustrate why Congress and the administration should give special attention to the housing needs of the elderly.

First, the average income of elderly persons falls well below that of working people, putting them at a serious disadvantage in the open marketplace. Second, physical disabilities which accompany advanced age render certain types of housing unsuitable for the elderly. Thus, the older person must try to find a type of housing which exists in far fewer numbers than standard homes or apartments, and he must try to acquire such housing with less money than younger citizens.

Third, whereas working people leave their homes during the majority of their waking hours, retired people spend a significantly greater portion of their time in their homes. The overall environment and

physical characteristics of those homes, therefore, assume a much greater importance.

A housing environment which is merely unpleasant from 6 p.m. to 8 a.m. may become exceedingly unpleasant or intolerable on a 24-hour-a-day basis. The fact that retired people spend so much more time in their homes means we need to consider their housing in a broad context, and examine the need for social, recreational, and nutritional programs in addition to bricks and mortar.

Mr. Chairman, let us now turn to the four bills sponsored by Senator Williams which are the specific focus of this hearing.

1. S. 2179: Demonstration loan program for the elderly; and S. 2185: Extension of section 202 housing for the elderly and handicapped program.

Because both of these bills involve the implementation—or revival—of the direct loan mechanism, we would like to discuss them together rather than separately.

This association's membership includes a number of section 202 projects, and we believe that the quality of housing built under the direct loan mechanism has generally been excellent. During the few years of its existence, the section 202 program proved highly successful. It attracted good sponsors and provided a kind of specialized housing needed by the elderly. At the same time, it experienced virtually no foreclosures.

The section 202 direct loan program was terminated several years ago by the Administration because of its adverse impact on the Federal budget. Although it is true that the immediate budgetary impact is great in the short run, it should be pointed out that, unlike the interest subsidy mechanism, a direct loan approach enables the Federal Government to eventually recoup its investment completely with interest.

Earlier this year, the AAHA recommended to HUD that it reinstitute the section 202 direct loan mechanism as a primary vehicle for elderly housing, and that to minimize the impact on the Federal budget, it should list outlays for this program as deferred assets rather than as regular Federal outlays. Or alternatively, a national revolving fund could be established to ease the budgetary impact.

The AAHA would therefore support the concept embodied in S. 2179, whereby a National Elderly Housing Loan Fund would be established, on an experimental basis, to operate outside the regular Federal budget and be financed by U.S. Treasury notes. We would also support testing the combination direct loan interest subsidy mechanism which is proposed by S. 2179.

Having urged the administration earlier this year to revive the section 202 program, we would certainly favor the \$100 million increase in authorized funding for this program as called for in S. 2185.

Second, S. 2180, the Housing Security Act of 1973.

The Housing Security Act seeks to address the very serious—and growing—problem of inadequate security in elderly housing and public housing projects. This legislation would create within HUD an Office of Security under the Assistant Secretary for Housing Management to plan and implement security programs in HUD-assisted housing.

It should be noted here that, although we all suffer from a national crime rate of tremendous proportions, this is yet another problem to which the elderly seem especially vulnerable. For one thing, they are often less able, for physical reasons, to ward off or escape an attack on their person or property. For another, their incomes are generally so much lower than those of younger people that they often cannot possibly recover from a financial loss due to theft or robbery. While a young employed person might merely be set back by the theft of \$10, \$20, or \$30, or so, a 90-year-old widow whose modest income requires that she choose between milk and bread might suffer great and painful hardships, not to mention the physical and emotional shock.

Our member homes located in high-crime areas find that inadequate security is a most serious problem for elderly residents, and whether the problem exists in federally or nonfederally subsidized housing, we believe it merits far greater attention than it has received in the past. The creation of a special office of security within HUD certainly would be a welcome first step toward alleviating this problem.

Although the scope of this subcommittee is limited to housing, because its chairman also serves on the Senate Special Committee on Aging—which delves into a much broader range of problems affecting the elderly—we would like to take this opportunity to recommend the initiation of a series of hearings on the more general problems of crime as it affects the elderly in all settings—not merely in federally subsidized housing projects.

Third, S. 2181, Intermediate Housing for the Elderly and Handicapped Act.

This bill would enable nonprofit sponsors of elderly housing, through the use of Federal interest subsidies, to purchase existing housing to be converted into multifamily intermediate housing for the elderly and handicapped. The idea is to enable people who might otherwise be institutionalized to avoid institutionalization, on the assumption that, generally speaking, people are better off and happier when they can live independently.

In this discussion of the subject of alternatives to institutionalization—which is obviously raised by S. 2181—we would inject one word of caution. It should be noted that there are a certain number of elderly people who—because of physical disabilities or the particular environment they live in—may well be better off inside a sheltered environment, or “institution,” than they are living by themselves. There are, for instance, elderly people in noninstitutionalized settings in New York City who are so isolated, so lonely, and who go through such tremendous struggles merely to exist, that one has to question the assumption that alternatives to institutionalization are always better than institutionalization.

Having injected this note of caution into this discussion, we would like to state our support for the goal that S. 2181 seeks to achieve. At the same time, we would like to bring to the attention of this committee a program initiated by the Hebrew Home for the Aged at Riverdale, N.Y., as yet another way to achieve this same purpose.

The Hebrew Home leases commercial apartments in a regular high-rise building—which houses people of all ages—to 35 elderly tenants so that they can live independently and yet still draw upon the various services that the nearby home provides. This arrangement enables the

elderly residents to live in a noninstitutionalized setting where they are truly integrated with the rest of the community.

The home provides to these people the full spectrum of services—health, recreational, cultural, and social—to these residents. Each apartment has a special tie-line with the home, so that if a resident needs emergency medical care, he can merely pick up the phone—even without dialing—and request immediate medical assistance. A shuttle bus makes frequent runs between the apartment building and the home, so that the residents have an easy time getting from one place to another.

Under this arrangement, the elderly people receive the extra services that they require without having to undergo the trauma of institutionalization, and at the same time they come into contact every day with people from the community. Since younger families with children live in the same apartment building, the elderly residents are able to mix with them—and do so—on a daily basis. In addition, the residents can prepare their own meals in their own kitchens, or, if they prefer, they can take their meals at the home.

The great advantage of this arrangement is that the elderly people can live in the normal community setting rather than in the artificial and isolated atmosphere which so often develops when they are completely segregated from the rest of society.

These, then, are our views on the four bills that you have introduced. In closing, Mr. Chairman, we would like once again to restate our support for the initiative Senator Williams has taken by introducing these bills. We believe the introduction of this legislation reflects a thoughtful and commendable effort to improve housing for the elderly.

At this point I would like Mr. Reingold to comment briefly on his program at Riverdale, which I believe may be of interest to you.

The CHAIRMAN. All right. We are glad to hear from you.

Mr. REINGOLD. Thank you.

Well, the advantage of our renting apartments in the community was, first, that we did not need capital funds to construct or buy an apartment building. Second, we were able to have it available at once without having to wait for construction, and so on. And third, of course, as was pointed out, the elderly could continue living in an integrated community rather than being isolated in a building of their own.

One of the important things that I want to highlight is that too often aged people enter an institution too soon, and sometimes perhaps there is no need to enter an institution at all. The reason that some enter an institution is merely to fulfill a single need.

They might need just companionship or a chance for a meal or some security.

Quite frequently it is the fear that when they get sick there will be no place for them to go or they will not be able to participate in decisionmaking as to where they could receive care when they get infirm.

Hence, they enter an institution. They rush into an institution to make sure all of these things will be available for them—in case.

And I can assure you that if you visit an institution and you find people have been there for 4 or 5 years, rest assured these people have entered the institution too soon.

And, unfortunately, once they are in an institution, they become so emotionally and psychologically dependent on the institution that you can't discharge them even if you tried—and we tried!

Thus, by giving them the kind of a halfway house, if I can call it that, where they are living in an apartment within easy access to the institution—and the institution serves as kind of a base or a backup service for this individual in case he might need it—the chances are that he might never need it, having this kind of security.

We have found that this kind of arrangement has been extremely successful.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator Williams.

Senator WILLIAMS. I appreciate these statements; very helpful!

I just wonder about the Hebrew Home for the Aged that you administer, Mr. Reingold. Are the leased, independent, commercial apartments your sole housing arrangement for the older people? Or do you have one unit of housing, apartment housing?

Mr. REINGOLD. No, sir; these are apartments which we have leased from a commercial building.

The CHAIRMAN. This is your exclusive method of housing?

Mr. REINGOLD. That's correct.

Senator WILLIAMS. Leasing commercial apartments?

Mr. REINGOLD. In addition to the institution, yes.

Mr. OLSON. He also has all levels of care in the regular facility, Senator. And this is across the street from the home itself.

Mr. REINGOLD. We have a 600-bed institution that has all the levels of care from the well aged to the quite infirm. What we have done by renting apartments was in a sense an extension of care to the community.

Senator WILLIAMS. You supplemented the institutional housing?

Mr. REINGOLD. Well, it was begun simply because of the long waiting list.

Senator WILLIAMS. I get you.

Mr. REINGOLD. Yes.

Senator WILLIAMS. Is there any Federal support in your program at all?

Mr. REINGOLD. There is no Federal housing aid, sir; and it turns out to be a program which we now feel has been extremely successful, not just as a makeshift for the waiting list but actually a program which provides care for people who by living in those apartments and having the backup service of the institution need not enter an institution at all—this is the point.

Senator WILLIAMS. Thank you very much.

Mr. OLSON. Thank you, Senator.

Dr. Louise Gerrard from the West Virginia Commission on Aging. We are very pleased to welcome you to this committee.

STATEMENT OF LOUISE B. GERRARD, EXECUTIVE DIRECTOR, WEST VIRGINIA COMMISSION ON AGING

Dr. GERRARD. Thank you, Senator.

Senator WILLIAMS. We look forward to your statement. Both Senator Randolph and Senator Byrd have commented that they are pleased you were going to be here today, and we are too.

Dr. GERRARD. Thank you, Senator.

I am Dr. Louise Gerrard, executive director of the West Virginia Commission on Aging.

The commission is the official State agency in West Virginia which administers the Older Americans Act, including the new nutrition program for the elderly at long last. We also administer a foster grandparent project in State correctional institutions and are responsible for the development of retired senior volunteer programs throughout the State.

I appreciate your invitation. From listening to the testimony this morning, I realize I am talking about a slightly different problem, although very much related. I am talking particularly about the isolated, rural, elderly, low-income groups in West Virginia, and I am certain these are typical of many places across the country.

In preparation for the White House Conference on Aging, the commission held forums in every single county in West Virginia, 55 counties in all, almost 400 forums, on the problems of older West Virginians.

Because West Virginia is a rural State, we concentrated especially on the needs of rural residents, and much of what I want to talk about today stems from our experiences during the hearings.

I don't mean to give the impression of a depressed area with depressed people sitting in isolated shacks waiting for the Federal Government to help. Our State motto, "Mountaineers Are Always Free," was borne out repeatedly in our hearings.

Ours are proud, independent people, but we feel we are not getting needed service from the Federal Government. They are inadequate in urban areas. They are almost completely lacking in rural areas.

I am skipping the statistical details which will be in the record, Senator.

There is a tendency in some quarters to feel that the problems of older people have been taken care of with the increase in social security and the pending federalization of old age assistance. Nothing could be more untrue, particularly as it relates to housing. How much housing will a 70-year-old widow be able to afford in rural Appalachia on a total income of \$120 a month? I'm not talking about adjusted income. I'm talking about total income.

Where are the housing developments being built to serve an elderly couple with a total income of \$200 a month?

I know in another committee you are interested in health care, and tied to this we find it is a 5-hour drive across the mountains for many of our people to reach a hospital or the nearest doctor, and it may cost them \$15 or \$20, paid to a neighbor, to take them for health care.

I am still haunted by what one man told us at one of our hearings in a rural county: "Some days," he said, "I eat, and some days I take my medicine; on my social security, I can't do both."

We say—and I am certain you agree—this is not a choice any senior citizen should have to make.

Our people have to make an equally impossible choice when it comes to housing.

Perhaps the best way I can indicate how Federal housing programs have not worked is to present some facts concerning a housing program that the Commission on Aging has been developing in a rural county in West Virginia. Again I will skip some of the statistics. They show that this is one of the most depressed counties in the State, but at the same time has many problems which are similar to the rest of rural America.

The idea we developed from hearings was for a small community-oriented housing development which would allow elderly people to remain in the community where they have lived all their lives and avoid the shock of moving to town. We would reduce isolation by building the housing units on a hard road where transportation, friends, churches, stores, et cetera, were more accessible. We called our project Project Hard Road.

We studied the county, identified the people who would move into a small project, saw them living in their deteriorating mountain dwellings, in one case in a chicken coop, in another case in an abandoned schoolbus. It seemed such a good idea—so everyone told us—and it was such a small request. How much could it cost to build 8 or 10 or 12 units, with a community room? Merely in terms of the money saved when these people otherwise would be sent to institutions, suffering from malnutrition, or emotional problems, or neglected health. It would actually save public funds and, we were bold enough to say, it would be more humane.

So we came to Washington, and everywhere we went we found great interest. One morning in HUD, the program administrator sent for staff to come hear this innovative idea.

At the Department of Agriculture, a special staff meeting was called to hear about a really new idea for rural America.

Everyone was interested, everyone said that certainly this was a good way of doing things, but unfortunately, their agencies had no programs which would fit our needs. All admonished us to keep in touch with them when we got funding so they could come and see how things were going. And they all wished us luck.

I'll spare you the details, but it became evident that no one in the Federal Government, in housing, was really thinking about our kind of people, our rural low-income elderly who could not be accommodated in high-rise buildings in the city.

Incidentally, we had one trip of rural elderly to Charleston to go around town, and we took them into the department store. The thing that fascinated them most was the escalator. These were 80-year-old people who had never seen escalators before.

So when we talk about putting them in high rises, we are talking about a different way of life.

We found our people needed to be near the land and the mountains and the surroundings in which they had spent their lives.

They could manage about \$30 a month for rent and utilities, but not much more. And, besides, every high-rise housing development for the elderly in the State has a long waiting list of city people, so

there were no vacancies even if our rural people wanted to move in.

Scattered rural population could not support the number of units needed to take advantage of the economies of scale our Federal brethren talked about. Furthermore, the management problem was insoluble.

We were unwilling to give up Project Hard Road. It was difficult for us to believe that none of the Federal programs was flexible enough, but reluctantly, after other trips to Washington, we had to admit that we were evidently speaking for forgotten people.

Happily, Senator Jennings Randolph had participated in the White House Conference on Aging forums in West Virginia and knew first-hand what we were talking about. We were able to secure, through his intercession, a grant of \$75,000 from the Claude Worthington Benedum Foundation; Gov. Arch Moore, Jr., gave money for planning from his own contingency fund, stressing his commitment to the project; our legislature was interested and concerned.

Because we knew that every penny we borrowed would have to be reflected in the rents charged the low-income elderly, we cut corners wherever we could; used Commission on Aging funds whenever possible; got donated services even when these would delay the project or, in some instances, do not do quite professional a job.

We decided to build in Maysel, population 200, one of only two places in Clay County with a water system. To indicate how rural our people are, when we were going around the community telling the elderly about this new housing project, I talked to one man who said, "Where is it?"

And I said, "Maysel."

He said, "Oh, ma'm, I'm not going to move into town."

We planned 10 apartments and a community building, all on one level, to blend in with the surrounding countryside. At this stage we got support from Farmers Home Administration, a 515 rural rental housing loan to partially finance Project Hard Road.

As you know, the 515 program is an interest credit program similar to the FHA 236 program, so I believe the figures I give you will apply to both programs. The loan did not include architectural, legal, engineering, or packaging fees. These costs, which would normally be included in the loan, were subsidized by our agency or by the grant from the Governor's office.

The cost of site development and construction of the buildings was \$133,050, so you can see the small scale we are talking about when you compare it with urban housing.

The cost of 3.2 acres of land was \$5,000.

The grant from the Benedum Foundation was \$75,000. This left \$63,050 to be financed by the Farmers Home Administration 515 loan.

The budget that was developed in order to determine the lowest possible rental rates did not include taxes or management costs. The project's nonprofit sponsor—a group of community people serving without pay—provides management services on a voluntary basis.

Incidentally, this was the first 515 loan made in the State of West Virginia to a nonprofit organization in the over 10-year history of the program, and unless some changes are made I am sorry to predict it will be another 10 years before another 515 loan is made to a nonprofit sponsor.

Despite the Benedum grant and other cost savings, the monthly rentals necessary to pay back the loan at 1 percent interest—the lowest possible rate, as you know—over a 50-year period and pay operating expenses are \$40 per month for six efficiency units and \$50 per month for four one-bedroom units. At 7½ percent interest—the market rate—the rentals would be \$70 and \$80 per month.

Skipping over, we just tried to point out in the statement there really is no Federal program which would meet the needs of people who have such low incomes that they would be unable to pay more than \$30 a month for an apartment with utilities.

We list some of the specific problems we have and urge particularly a rural rehabilitation program, a home repair grant program rather than a home repair loan program.

Many of our people would be able to make it in the communities in which they grew up if they could get grants for repairs. We have an arrangement with emergency employment where older men are hired to make repairs. It's incredible what you can do in a rural area for \$150 or \$200, because this is only for materials; not for labor.

But we find without a rural grant program many of our people simply do not get the home repairs.

In summary, adequate housing cannot be separated from the total well-being of our people. I urge the committee to consider rural housing programs for low-income elderly as part of the services older men and women have a right to expect from their Government.

Thank you.

[The complete prepared statement of Dr. Gerrard follows:]

REMARKS OF DR. LOUISE B. GERRARD
EXECUTIVE DIRECTOR
WEST VIRGINIA COMMISSION ON AGING

Mr. Chairman, Members of the Committee, I am Dr. Louise B. Gerrard, Executive Director of the West Virginia Commission on Aging.

The Commission is the official state agency in West Virginia which administers the Older Americans Act, including the new nutrition program for the elderly. We also administer a foster grandparent project in state correctional institutions, and are responsible for the development of Retired Senior Volunteer Programs (RSVP) throughout the state.

I appreciate your invitation and the opportunity to present testimony regarding the housing problems and needs of elderly people, specifically the rural elderly.

In preparation for the White House Conference on Aging, the Commission held forums in every single county in the state - 55 in all, on the problems of older West Virginians.

Because West Virginia is a rural state, we concentrated particularly on the needs of rural residents, and much of what I wish to talk about today stems from our experiences during 1970 and 1971. We have gone back since, to see what changes have occurred, and to help speed them along, and although some good and some necessary changes have taken place, the problem of inadequate housing remains a central fact of life.

I don't mean to give the impression of a depressed area with depressed people sitting in isolated shacks waiting for the Federal government to help. Our state motto, "Mountaineers are Always Free" was borne out repeatedly in our hearings. Ours are proud, independent people who have given much to their country and their state, and stand ready to give even more. The men and women who participated in our forums represented a cross-section of the state's older population. Our hearings attracted the largest turnout of older citizens in the state's history for an event relating specifically to themselves.

In age, participants ranged all the way from those still a few years from retirement to men and women in their nineties. A 94-year old woman received a standing ovation from those in her forum; she acknowledged the tribute with a sprightly wave of her hand. One 91-year old man was a most interested participant, stating his views in a firm voice. A man and wife in a southern county, both over 70 years of age, cheerfully walked two miles over narrow, hilly roads to get to the forum, and were prepared to return home the same way.

Some participants were so frail they had to be interviewed at bedside. Some, on wheel chairs, waited impatiently for friends to take them to forums, for otherwise they were homebound. Inadequate housing and inadequate transportation were ever-recurring twin problems.

I will be talking this morning specifically about the low income rural elderly in West Virginia. However, I feel that the problems and needs of the elderly in West Virginia are not very different from those of rural, low income elderly people in other areas of the country.

I would like to discuss briefly first, some of the problems and needs which are relevant to housing, and second, Federal housing programs which we feel simply do not work in rural areas. Finally, I would like to suggest a few ways to help alleviate the problems.

Population and Income Characteristics

In West Virginia, the population 65 and over represents 11.1 percent of the total population as contrasted with 9.9 percent nationally. Men and women 60 and over represent 16 percent of the total population in West Virginia, 14.1 percent nationally.

Perhaps more significant is the fact the number of people 65 and over in our state increased 12.5 percent between 1960 and 1970, while the State's total population decreased over 6 percent during this period. From 1950 to 1970, the figures show a 40 percent increase in the elderly population and a 13 percent decrease in the total population. As you know, the elderly population nationally is also increasing rapidly.

West Virginia is the second most rural State in the nation, with 61 percent of the population living in places of less than 2500 people. A further breakdown shows that 53 percent of the population live in communities of less than 1,000 people. A majority of West Virginians over 60--57.5 percent--live in rural communities of under 2,500 population. I would like to point out that only one of these 21 counties has ever had any type of federally assisted housing program.

To further compound the problems of rural isolation, sparsely settled population, and mountainous terrain, are the problems of the very low fixed incomes of the rural elderly.

We have found a very high correlation between ruralness and poverty among the elderly in West Virginia, which I am certain is found in most areas. For example, in Kanawha County, where the state capital, Charleston, is located, 34.7% of the elderly are listed as poor. In adjoining Lincoln County, where the largest town has only 1,024 people, 62.5% of the elderly are poor.

There is a tendency in some quarters to feel that the problems of older people have been taken care of with the increase in Social Security and the pending federalization of Old Age Assistance. Nothing could be more untrue, particularly as it relates to housing. How much housing will a 70-year old

widow be able to afford in rural Appalachia on a total income of \$120 a month? Where are the housing developments being built to serve an elderly couple with a total income of \$200 a month? It is five hours' drive across the mountains to the nearest hospital for many of our people, with fifteen or twenty dollars in transportation costs every visit.

I am still haunted by what one man told us at a hearing. "Some days I eat, and some days I take my medicine," he said. "On my social security, I can't do both." We say - and I am certain you agree - this is not a choice any senior citizen should have to make.

Our people have to make an equally impossible choice when it comes to housing.

Federal Housing Programs in West Virginia Rural Rental
and 236 Programs

Perhaps the best way I can indicate how federal housing programs have not worked is to present some facts concerning a housing program that the Commission on Aging has been developing in a rural county in West Virginia.

Clay County is a totally rural county approximately 40 miles from Charleston. The largest town is Clay, which has a population of 479 people. From 1960 to 1970 the population decreased 21.9 percent while the elderly population increased 11.6 percent. Over 61 percent of the elderly population is poor.

Fifty-one percent of the housing units lack some of all plumbing facilities as compared to 18.3 percent State-wide and 6.9 percent nationwide. The median value of owner occupied housing is \$5,000 compared to \$11,300 in the State and \$17,000 in the U.S. The median contract rent in Clay County is less than \$30 per month--this compares to \$52 and \$90 for the State and U.S.

The idea we developed from hearings was for a small community-oriented housing development which would allow elderly people to remain in the Community where they had lived all their lives, and avoid the shock of moving to town. We would reduce isolation by building the housing units on a hard road where transportation, friends, churches, stores, were more accessible. We called our dream Project Hard Road.

We studied the county, identified the people who would move into a small project, saw them living in their deteriorating mountain dwellings, in one case in a chicken coop, in another in an abandoned school bus. It seemed such a good idea - so everyone told us, and such a small request: how much could it cost to build eight or ten or twelve units, with a community room? Merely in terms of the money saved when these people otherwise would be sent to institutions, suffering from malnutrition, or emotional problems, or neglected health. It would actually save public funds and, we were bold enough to say, would be more humane.

So we came to Washington, and everywhere we went we found great interest. One morning in HUD, the program administrator sent for staff to "come hear this innovative idea." At the Department of Agriculture, a special staff meeting was called to hear about a "really new idea for rural America." Everyone was interested, everyone said that certainly this was a good way of doing things, but unfortunately, their agencies had no programs which would fit their needs. All admonished us to keep in touch with them when we got funding, so they could come and see how things were going. And they all wished us luck.

I'll spare you the details, but it became evident that no one really was thinking about our kind of people, our rural low-income elderly who could

not be accommodated in high-rise buildings in the city, who needed to be near the land and the mountains and the surroundings in which they had spent their lives, who could manage about \$30 a month for rent and utilities, but not much more. (And, besides, every high-rise housing development for the elderly in the state had a long waiting list of city people, so there were no vacancies even if our rural people wanted to move in.)

Scattered rural population could not support the number of units needed to take advantage of the economies of scale our Federal brethren talked about. Furthermore, the management problem was insoluble.

We were unwilling to give up Project Hard Road. It was difficult for us to believe that none of the Federal programs was flexible enough, but reluctantly, after other trips to Washington, we had to admit that we were speaking for the forgotten people.

Happily, Senator Jennings Randolph had participated in the White House Conference on Aging forums in West Virginia, and knew first-hand what we were talking about. We were able to secure, through his intercession, a grant of \$75,000 from the Claude Worthington Benedum Foundation. Governor Arch Moore, Jr. gave money for planning from his own contingency fund, stressing his commitment to the project. Our Legislature was interested and concerned. Because we knew that every penny borrowed would have to be reflected in the rents charged the low-income elderly, we cut corners wherever we could, used Commission on Aging funds wherever possible, got donated services even when these would delay the project or, in some instances, do not-quite-professional a job.

We decided to build in Maysel, population 200, one of only two places in Clay County with a water system. We planned 10 apartments and a community

building, all on one level, to blend in with the surrounding countryside. At this stage, we got support from Farmers Home Administration, a 515 rural rental housing loan to partially finance Project Hard Road.

As you know, the 515 program is an interest credit program similar to the FHA 236 program, so I believe the figures I give you would apply to both programs. The loan did not include architectural, legal, engineering or packaging fees. These costs, which would normally be included in the loan, were subsidized by our agency.

The cost of site development and construction of the buildings was \$133,050. The cost of 3.2 acres of land was \$5,000. The grant from the Benedum foundation was \$75,000. This left \$63,050 to be financed by the Farmers Home Administration 515 loan.

The budget that was developed in order to determine the lowest possible rental rates did not include taxes or management costs. The project's non-profit sponsor - a group of community people - provides management services on a voluntary basis, and received a tax exempt status from the County Assessor. Incidentally that was the first 515 loan made in the State of West Virginia to a non-profit organization in the over 10 year history of the program, and unless some changes are made I am sorry to predict it will be 10 years before another 515 loan is made to a non-profit sponsor.

Despite the Benedum grant and other cost savings the monthly rentals necessary to pay back the loan at 1% interest (the lowest possible rate) over a 50 year period and pay operating expenses are \$40 per month for 6 efficiency units and \$50 per month for 4 one bedroom units. At $7\frac{1}{2}\%$ interest--the market rate--the rentals would be \$70 and \$80 per month.

If the \$138,050 had been financed entirely by the 515 loan the average rental per unit would have been \$70 per month even at the 1% interest rate.

If the total project costs had been included in the loan, which would typically be the case under the 515 or 236 program, the average rental per unit would have been approximately \$90 per month. This figure still does not include the higher operating and management expenses that would have to be included, which would raise the monthly rentals even higher.

As you recall, the median rent paid in Clay County is less than \$30 per month, and 61.1 percent of the elderly population is poor.

Again I would like to say that Clay County is not too different from many rural counties across the U.S. Without the Benedum Foundation and other subsidies - too frequently unavailable - where do these people turn?

Rehabilitation Programs (FmHA 504 and HUD Sec. 115)

A large percentage of the elderly men and women in West Virginia--69%--own their own homes. Many of these houses have become or are becoming dilapidated due to the low fixed incomes of the elderly owners, who are unable to make necessary repairs.

The Farmers Home Administration 504 home repair loan would seem to be the answer to this problem. However, in 1972 only 93 of these 504 loans were made in West Virginia. We are presently working on a cooperative effort with the West Virginia Housing Development Fund and the State Farmers Home Administration to see if an intensive effort will result in more such loans. At the same time, we will document problems and reasons why the program is not better utilized.

In urban areas, the HUD Section 115 program provides a \$3500 grant to bring houses up to standards in code enforcement areas. In rural areas the FmHA legislation authorizes a home repair grant program, but appropriations exclude the grant program and provide only for the loan program.

I would urge the home repair grant program for rural areas as well as for urban areas.

Public Housing

The one housing program which provides a deep enough subsidy to meet the rental levels needed in rural areas has come upon hard times in recent years. The high crime rates and high density problems associated with the public housing program in large urban areas have simply not occurred in the few small towns in West Virginia (Buckhannon, Grafton, Spencer) which have public housing.

The public housing program, however, is not particularly suited to rural areas, due to HUD emphasis on economies of scale, economic feasibility, and the problems of management of small scattered projects.

I would stress methods and programs to encourage the consolidation of administrative and management functions on a regional and/or statewide basis to generate more favorable economies of scale and feasibility.

Summary and Recommendations

In summary, the housing needs of the rural, low income elderly people of West Virginia and rural areas in general are too complex and extensive to be solved by efforts to make the urban investment-oriented federal housing programs work in rural areas. A more direct approach is needed. A new approach is required.

I remind you that nationally, rural residents account for 30 percent of the population, but two-thirds of the nations' bad housing is in rural areas.

I would like to make the following suggestions and recommendations to the committee:

1) I would like to recommend the more comprehensive approach to rural housing problems encompassed in the Emergency Rural Housing Administration Act (S2190).

2) I would like to recommend a home repair grant program for rural areas.

3) I would suggest not only the continuation but the expansion of the public housing program to provide the deeper subsidy required by the elderly in rural areas.

Adequate housing cannot be separated from the total well-being of our people. I urge the Committee to consider rural housing programs for low-income elderly as part of the services older men and women have a right to expect from a compassionate government.

Thank you for the opportunity of presenting these remarks today.

WEST VIRGINIA COMMISSION ON AGING
(Source: Census data compiled by HUD for the White
House Conference on Aging, November 28 - December 2, 1971)
TABLE 1S

POPULATION BY SELECTED AGE GROUPS, BY RACE AND
SEX: STATE DISTRIBUTION - CONTINUED

State and Sex	Total	AGE GROUP AND RACE								
		65-74			75-84			85 and Over		
		White	Negro	Other	White	Negro	Other	White	Negro	Other
U.S.	203,211,926	11,281,137	1,042,820	111,499	5,672,393	398,550	48,202	1,376,812	117,384	16,705
W.Va.	1,744,237	114,226	6,533	164	55,819	2,641	78	14,318	652	43
MALE	844,669	51,320	3,111	71	23,974	1,322	36	5,816	279	26
FEMALE	899,568	62,906	3,422	93	31,845	1,319	42	8,502	373	17

Age Groups as a % of Total Population

	65-74	75-84	85 and over
U.S.	6.12	3.01	.74
W.VA.	6.93	3.36	.86

TABLE 2S
POPULATION 65 YEARS AND OVER, BY RACE AND BY
LIVING ARRANGEMENT: STATE DISTRIBUTION - CONTINUED

State	Total	Race and Living Arrangement								
		White			Negro			Other		
		House-holds	Inmates of In-stitu-tions	Group Quar-ters	House-holds	Inmates of In-stitu-tions	Group Quar-ters	House-holds	Inmates of In-stitu-tions	Group Quar-ters
U.S.	20,065,502	17,290,601	905,470	134,271	1,499,617	49,852	9,285	168,680	5,179	2,547
W.VA.	1,991,471	178,934	4,222	1,207	9,506	246	74	277	2	6

% of Population 65+ in Institutions

	White	Negro
U.S.	4.94	3.2
W.VA.	2.29	2.5

TABLE 3S

NUMBER OF FAMILIES, WITH MEMBERS 65 YEARS AND OVER (OTHER THAN HEAD AND WIFE), BY FAMILY TYPE, AND BY RACE OF HEAD: STATE DISTRIBUTION - CONTINUED

State		FAMILY TYPE AND RACE OF HEAD								
		Husband and Wife			Other Family With Male Head			Family With Female Head		
		White	Negro	Other	White	Negro	Other	White	Negro	Other
U.S.	2,339,920	1,187,113	102,449	20,700	307,068	29,592	4,870	589,517	93,044	5,567
W.VA.	22,171	12,306	402	14	2,934	145	2	6,001	358	9

TABLE 4S-1

OCCUPIED HOUSING UNITS, BY TYPE OF FAMILY WITH HEAD 65 YEARS AND OVER, BY TENURE: STATE DISTRIBUTION - CONTINUED

State	FAMILY TYPE AND TENURE								
	All Families			Husband-Wife		Other Male Head		Female Head	
	Total	Owner	Renter	Owner	Renter	Owner	Renter	Owner	Renter
U.S.	7,099,443	5,467,297	1,632,146	4,490,385	1,235,330	243,854	88,065	733,058	308,751
W.VA.	77,253	62,345	14,918	48,861	10,555	3,283	1,001	10,201	3,362

TABLE 48-2

OCCUPIED HOUSING UNITS, BY TYPE OF FAMILY, WITH HEAD 65 YEARS AND OVER, BY RACE OF HEAD: STATE DISTRIBUTION--CONTINUED

State and Race	FAMILY TYPE			
	All Families	Husband-Wife	Other Male Head	Female Head
U.S.	7,099,443	5,725,715	331,919	1,041,809
W.VA	77,263	59,416	4,284	13,563
WHITE	73,156	56,489	4,023	12,644
NEGRO	4,013	2,858	254	901
OTHER	94	69	7	18

TABLE 55

VALUE OF OWNER-OCCUPIED HOUSING UNITS WITH HUSBAND-WIFE FAMILIES, BY RACE OF HEAD, WITH FAMILY HEAD 65 YEARS AND OVER: STATE DISTRIBUTION - CONTINUED

State and Race	Value						
	Total	Less than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$24,999	\$25,000 or Over
U.S.	3,344,320	297,024	728,568	774,748	619,739	380,006	544,235
W.VA.	35,962	7,986	10,487	7,483	4,646	2,435	2,925
WHITE	33,820	7,031	9,739	7,221	4,536	2,399	2,894
NEGRO	2,106	948	732	258	104	36	28
OTHER	36	7	16	4	6	0	3

Owner-Occupied Housing Units (Husband-Wife Families) with Family Head 65+: % with Value less than \$5,000

U.S.	8.88
W.VA.	22.2

TABLE 6S

CONTRACT RENT OF RENTER-OCCUPIED HOUSING UNITS WITH HUSBAND-WIFE FAMILIES,
BY RACE OF HEAD, WITH FAMILY HEAD 65 YEARS AND OVER: STATE DISTRIBUTION - CONTINUED

State and Race	CONTRACT RENT							
	Total	Less Than \$40	\$40 to \$59	\$60 to \$79	\$80 to \$99	\$100 to \$149	\$150 or More	No Cash Rent
U.S.	1,148,306	121,433	172,009	200,864	144,178	225,938	175,904	107,980
W.VA.	8,861	3,142	2,128	1,233	381	343	108	1,626
WHITE	8,366	2,818	1,983	1,181	375	338	108	1,563
NEGRO	578	319	140	52	4	4	0	59
OTHER	17	5	5	0	2	1	0	4

Renter-Occupied Housing Units
(Husband-Wife Families)
with Family Head 65+:
% With Contract Rent Less Than \$40

U.S.	10.57
W.VA.	35.06

TABLE 8S-1

POPULATION 65 YEARS AND OVER IN OCCUPIED HOUSING UNITS, BY PLUMBING FACILITIES AND PERSONS PER ROOM, BY TENURE: STATE DISTRIBUTION - CONTINUED

State and Tenure	Total Population in Housing Units			Population in Units With 1.01 or More Persons Per Room		
	Total	With All Plumbing	Lacking Some or All Plumbing	Total	With all Plumbing	Lacking Some or All Plumbing
U.S.	18,958,898	17,353,837	1,605,061	528,415	413,284	115,131
W.VA.	188,717	152,043	36,674	5,486	3,313	2,173
OWNER OCCUPIED	144,848	120,569	24,279	3,608	2,352	1,256
RENTER OCCUPIED	43,869	31,474	12,395	1,878	961	917

Pop. 65+ in Occupied Housing Units: % Lacking Some or All Plumbing

U.S.	8.47
W.VA.	19.43

Pop. 65+ in Units with 1.01 or More Persons Per Room, Lacking Some or All Plumbing

U.S.	21.79
W.VA.	39.61

TABLE 8S-2

POPULATION 65 YEARS AND OVER IN OCCUPIED HOUSING UNITS, BY PLUMBING FACILITIES AND PERSONS PER ROOM, BY RACE OF HEAD: STATE DISTRIBUTION - CONTINUED

State and Race	Total Population in Housing Units			Population in Units With 1.01 or More Persons Per Room		
	Total	With All Plumbing	Lacking Some or All Plumbing	Total	With All Plumbing	Lacking Some or All Plumbing
U.S.	18,958,898	17,353,837	1,605,061	528,415	413,284	115,131
W.VA.	188,717	152,043	36,674	5,486	3,313	2,173
WHITE	179,012	144,815	34,197	4,916	2,944	1,972
NEGRO	9,455	7,017	2,438	558	363	195
OTHER	250	211	39	12	6	6

West Virginia Commission on Aging

The CHAIRMAN. Thank you. That is a very fine statement. We are delighted to have it.

By the way, we have had some testimony in here previously with reference to West Virginia.

Dr. GERRARD. Yes; Mr. Biasucci was here.

The CHAIRMAN. Yes, that's right, from the rural section.

Dr. GERRARD. Yes; we are working with Mr. Biasucci on rural programs in West Virginia.

The CHAIRMAN. Senator Williams.

Senator WILLIAMS. Excellent statement; very helpful! I am glad that I am a sponsor of S. 2190 which is the rural housing, one of the 20 or 21 cosponsors of that legislation.

Dr. GERRARD. What does it look like as far as passage is concerned, Senator?

Senator WILLIAMS. The prospects for S. 2190, the Emergency Rural Housing Act: If there is anybody who has been in the forefront of better housing for all Americans and with emphasis on rural housing, it is Senator Sparkman. When he supports something, the prospects here in Congress are good.

The CHAIRMAN. Well, I was here and managed the bill in 1949 which said every American family ought to have a reasonable chance to have a decent home in good surroundings. And I believe that is a good goal that we set, and we ought to continue to work for it. And certainly that applies to the rural sections as well as to the urban areas.

Although, you know, we have had the hardest time in the world getting people to recognize the fact that there are slums in the country and that there is poverty in the country.

However, I will say this committee has recognized it, and we have enacted some very fine programs. And you are seeing more and more good housing in rural areas.

I am always glad when I am driving through a rural area to see a nice, livable home.

Dr. GERRARD. We hope for your help. One thing we don't have to worry about in rural West Virginia is security, which you were discussing earlier today. This is not one of our problems. We understand the urban problem. But our need is more help from the Federal Government to build in rural West Virginia.

The CHAIRMAN. By the way, the gentleman from West Virginia that testified recently——

Dr. GERRARD. Mr. Biasucci.

The CHAIRMAN [continuing]. Testified that section 236 housing was not adaptable to West Virginia. Is that because such a great part of it is rural and population is more or less scattered?

Dr. GERRARD. That's right; we try to get 10 or 12 people in a project, and when the Feds talk to us about a 100 units, this would require maybe a 2-hour drive for some of our people to get there.

The CHAIRMAN. When we adopted the 235 and 236 programs we immediately provided a similar program for the rural area, and, of course, it is under section 502. And I should think the program that corresponds to 235 would be usable in the rural areas.

Dr. GERRARD. Well, we are trying, and we are trying to get central management so you don't have the expense of a manager for those small, scattered units, but somebody who can cover quite an area.

The CHAIRMAN. Senator Williams, anything further?

Senator WILLIAMS. Nothing further.

The CHAIRMAN. Thank you very much. Very fine contribution.

Dr. GERRARD. Thank you, Senator.

The CHAIRMAN. Next we have a panel consisting of Harry Haskell, Jr., trustee of the National Recreation and Park Association and former mayor of some place that looks like "Delaware." That is a big municipality. [Laughter.]

Mr. William H. Whyte, of New York, trustee of the American Conservation Association, Inc.

Mr. James J. Truncer of Lincroft, N.J. I believe this is your portion, Senator Williams.

Senator WILLIAMS. They are aiming to talk to S. 12, the Urban Parkland Heritage Corporation of 1973. Many of the members of the panel were with us together 12 years ago when we embarked upon this congressional attention to the need for some open space in urban areas, the bill I introduced you remember, Senator Sparkman.

The CHAIRMAN. Yes; I do.

Senator WILLIAMS. I will say it never would have been law if you in one conference had not had just the wise words at the right moment, and in the compromise we took something the House had and they took something we had.

The CHAIRMAN. I remember that.

By the way, talking about open spaces, I had the pleasure just on the 18th of this month to go down to my hometown, not where I am living now but where I went to high school, in Hartselle, Ala., to the dedication of a park that was assisted with \$300,000, part of the open spaces program. And I was delighted that they dedicated a park and named it for me.

Senator WILLIAMS. They certainly should have; I didn't know that; that is great.

Mr. Chairman, could I have permission to put my statement—

The CHAIRMAN. I didn't call the name of Mr. Dwight Rettie of Arlington, Va., executive director of the National Recreation and Park Association.

Senator WILLIAMS. Could I include my statement at the beginning?

The CHAIRMAN. It will be incorporated in the record (see p. 2006).

The CHAIRMAN. Senator Williams, I would like to designate you as the interrogator of these gentlemen.

Do you have prepared statements?

Mr. TRUNCER. Yes; we do.

The CHAIRMAN. Go ahead, Senator Williams. I will leave it up to you. This is essentially your program.

Senator WILLIAMS. I appreciate that. So why don't we run through the panel with your statements and then get into a dialog and discussion.

The CHAIRMAN. Very well.

STATEMENTS OF HAROLD G. HASKELL, JR., TRUSTEE, NATIONAL RECREATION AND PARK ASSOCIATION AND FORMER MAYOR OF WILMINGTON, DEL.; WILLIAM H. WHYTE, TRUSTEE, AMERICAN CONSERVATION ASSOCIATION, INC.; JAMES T. TRUNCER, DIRECTOR, MONMOUTH COUNTY, NEW JERSEY, PARK SYSTEM; AND DWIGHT RETTIE, EXECUTIVE DIRECTOR, NATIONAL RECREATION AND PARK ASSOCIATION

Mr. RETTIE. Mr. Chairman, I am Dwight Rettie, executive director of the National Recreation and Park Association, and on behalf of NRPA and the members of this panel I want to thank you for the opportunity to appear before this subcommittee on the important urban legislation you are considering.

I would like very briefly to introduce, if I may, the members of the panel who are here whom we have selected because they bring to the committee a range of expertise and perspective that we think will be useful to you as you consider this legislation. You will hear first from Mr. Harry Haskell, Jr.

Mr. Haskell is a citizen member of the board of trustees of the National Recreation and Park Association, a successful businessman, politician, and community leader. He is president, chairman of the board, and chief executive officer of Abercrombie & Fitch Co.

He has served with distinction in the U.S. Congress as a Congressman from Delaware and also as mayor of Wilmington, Del.

Mr. Haskell was on the advisory committee to the White House Conference on Aging and is presently a director of the Delaware Mental Health Association, the Wilmington YMCA, the Boy Scouts of America, and is a trustee of the Delaware Society for Crippled Children. He is a member of the Urban Coalition and the National Association for the Advancement of Colored People.

Mr. Haskell's endeavors reflect his strong concern for our urban communities and for the quality of life of our people.

The next panelist is William H. Whyte. Mr. Whyte is a leading authority in a variety of fields. His books include "The Organization Man," "Open Space Action," "Custer Development," and a recent volume on the field of open space, "The Last Landscape."

He continues to pursue his interests in community development through research, most recently through his involvement in a project studying how people utilize urban spaces. Mr. Whyte is a member of the National Recreation and Park Association and also is a trustee of the American Conservation Association, Inc.

The third panelist is Mr. James Truncer. Mr. Truncer is a professional member of the National Recreation and Park Association. He holds B.S. and M.S. degrees from Michigan State University in park and recreation administration and his career has exposed him to a wide variety of park and recreation management experiences at the Federal, State and local levels.

He is presently director of the Monmouth County park system.

Mr. Truncer is president of the New Jersey Recreation and Park Association, one of NRPA's affiliates. He is also a member of the board of directors of the National Association of County Park and Recreation Officials, an arm of the National Association of Counties.

I would like to turn now, if I may, to Mr. Haskell.

Mr. HASKELL. Senator Williams, Senator Sparkman, it is a pleasure to be back here and have a chance to testify as a private citizen on a subject that is close to my heart.

I would like to submit my formal testimony for the record if I could and just say a few things that I think this legislation really means to me more as a former mayor than a Congressman or chief executive of a corporation in this country.

I don't know of anything in our city, Wilmington, Del., which is half black, half white—we had major riots in our city when I became mayor—and I don't know of anything we did that meant so much as to provide some physical space for the kids to play in and to organize that space.

I think we may have done more, relatively, than any other city in this regard. We did it consciously. And we think it makes a great deal of difference in the urban crisis of today that continues.

You, I see here have planned 90-percent matching money, and to any chief executive officer of a city, funds are everything. And the ability to use them with some discretion is very important.

I know the special revenue sharing legislation is before you. I know that this does categorize in a sense, and I know that you are interested in the national priority of getting the money into this area. This is certainly critical with us.

I speak as a mayor. I was on the legislative action committee of mayors and traveled all around the country, and we did believe very strongly in the necessity of getting the funds and having the power to make our own priorities.

You have emphasized here in this legislation the need for maintenance money. Again it's the same thing for us, very important I think, the fact that you have increased the amount of funds is also important.

Another major importance to us is your hitting a priority of the country. It's very important to us who are away from Washington to know that, the power and the use of that national income will be used for the right priority.

I personally would like to testify very strongly to this measure both on behalf of the National Recreation and Park Association, of which I have just become a member, and as a former mayor.

And I hope that you have a chance—whether the bill itself has a chance or not I don't know, but if the priority and the importance you are attaching to it can rub off in other legislation, we would certainly approve it.

Thank you, Mr. Chairman.

Senator WILLIAMS. Thank you. What do you get called? Mayor? Congressman? Mr. Chairman?

Mr. HASKELL. Right now it is president of Abercrombie & Fitch.

The CHAIRMAN. Let me ask you this. I will tell you the reason I ask that. On this schedule it says "Mayor or D-e-l."

Mr. HASKELL. I used to be a Congressman representing D-e-l, but that was the city of Wilmington, sir.

The CHAIRMAN. The city of Wilmington?

Mr. HASKELL. Yes.

The CHAIRMAN. All right. Go ahead.

Senator WILLIAMS. The full statement, of course, will be included in the record. I appreciate the strong support.

[The prepared statement of Mr. Haskell follows:]

STATEMENT OF HARRY G. HASKELL, JR., TRUSTEE, NATIONAL RECREATION AND
PARK ASSOCIATION

Mr. Chairman, it is a great pleasure for me to appear before the Committee on the legislation you are considering today. This is something of a new role for me; in the recent past, I have come here to testify as the mayor of one of our major cities—today I hope I can not only represent them, but also the entire park and recreation movement in the United States. A short time ago I was elected to the Board of Trustees of the National Recreation and Park Association and my testimony today reflects the views of the Association through its Board of Trustees.

With now something more than a full decade of experience behind the Open Space Land Program so farsightedly sponsored by you, Senator Williams, in 1961, it is most timely that you have again proposed to update that legislation to meet the park and recreation needs of urban America.

In this period, during which revenue sharing and so-called "bloc grants" are receiving increased attention, particularly in urban programs, some people may argue that it is inconsistent to concurrently propose a new and substantially expanded categorical grant-in-aid program.

As a mayor, I supported the bloc grant idea and so did the National Recreation and Park Association at the time Congress was considering the Administration's proposed in the last session. I do not think that consideration of S.12, the Urban Parkland Heritage Act, is inconsistent with other strategies which the Congress may be considering to consolidate and simply Federal categorical grant-in-aid programs.

Grant consolidation and simplification, whether it is called revenue sharing or by any other name, does not lessen the need for understanding, for planning, and for meeting specific urban needs. One of those needs is for adequate parks and open space and recreation programs for people.

In other testimony this morning you will hear about the magnitude of this need and about its significance at the local level.

In these opening remarks, however, I want to indicate to you my conviction and that of the National Recreation and Park Association that any legislative proposal to make the grant-in-aid process more rational, simpler, and more effective must recognize in a specific way the importance of leisure activities and areas in city life that have become oppressively dehumanized for many people. Many people find their jobs less satisfying and for many millions of people who live in the hearts of our metropolitan areas, an important part of the quality of their lives is bound up in the quality of the environment in which they live and the opportunities which they may share for quality recreation programs.

S. 12 contains important features that would update earlier concepts and make them more relevant to today's problems:

(1) It can set the stage for more adequate programming and maintenance of existing areas and facilities.

(2) It would more nearly match fiscal resources to the size of the need.

(3) It would erase many of the planning boundaries that have plagued park and recreation planning in the past.

We feel it is imperative that Congress articulate national goals, priorities and directions for Federal assistance. These national goals, we believe, include:

The preservation of open space and historic properties:

The interrelated planning of all facets of community development, including housing;

The fostering of meaningful advance citizen participation in local decision making (not strictly through the electoral process which largely is effective as a negative reaction to an accomplished fact, and comes too late); and

The direction of planning funds in a way which will build the local capacity to think and plan broadly in meeting the goals for a better community.

With the fervent hope that the legislation this Committee will develop for housing and urban development will provide guidance and leadership to salving our major urban problems, we support the intent of S. 12 and the revision and consolidation of existing programs.

Senator WILLIAMS. Mr. Whyte.

Mr. WHYTE. Senator Williams and Senator Sparkman, rather than read the statement I would like to submit it and make a couple of points.

First, there certainly must be a salute to you, Senator Williams, and Senator Sparkman, for what happened in this room about 12 years ago. For everybody concerned with open spaces the title VII program was the big breakthrough. Quite aside from the money that flowed out of the programs, it has set in motion many things and that is why there are exciting opportunities to be unlocked by S. 12.

One is the coupling of the open spaces of private development with community open spaces. Thanks to the growing adoption of the cluster principle, we have much better developments now. Instead of splattering the houses all over their tracts, more and more developers are concentrating them on the most buildable parts and devoting the rest of the land to open space uses. The homeowners benefit. The community benefits.

But not as much as they should. All too often local zoning and planning boards consider such plans only on a project-by-project basis. The result is bits and pieces.

I think of one community where the developer has put the open space along a stream which runs through the property. He has made a very nice walkway and recreation areas. So far, so good.

But then the stream flows on to the property of another developer. He puts the stream in a culvert, and his open space somewhere else. About a quarter mile further along the stream comes out of the culvert and meanders across a weedy piece of land being held by a speculator for subsequent development. Eventually, the stream reaches a community school and park site. But the connections aren't made.

Thus are opportunities squandered—open spaces of cluster developments going this way, community open spaces going that way. Very few communities have sat down in advance and said, "Look, we know there is going to be development here. We are going to give you a lot of leeway, developers, in planning your subdivisions, but you have got to provide spaces that tie in with the community open space plan."

Whenever that has been done—Santa Clara County in California is an example—the different kinds of open space complement each other and a few strategic public purchases can provide the key links for connecting the spaces into a whole system.

I think there might be some language in S. 2 giving specific priority to this coordinating of private development space with public space. A great deal can be done—and at no extra public expense.

The second point, which Mayor Haskell spoke about, is the provision for operation and maintenance money. I would like to suggest that this be broadened to specifically include program money. This is particularly important in city areas.

In studying city parks and programs, one of the first things that strikes you is that the great problem is not overuse—but underuse. Some places are jammed, but most are not, and some are vacant most of the time.

Why? Design sometimes has more to do with it. But the biggest factor in most cases is program personnel or the lack of them; maintenance personnel, not operation personnel, important as they are, but

program personnel, which I will define very simply—as people to work with the children and to work with the people of the neighborhood.

I think of a new Adventure Playground. It ended up a success, but it was embarrassingly vacant many times until the leaders recognized that they had to really go out and work with the people of the neighborhood and, in effect, merchandise that open space.

This is, I know, a strange concept to people, particularly in rural areas, because of the image of crowded cities.

To summarize, the key that unlocks the usefulness of city open spaces is people to work with people—in the programs in Wilmington. Usually, this is the kind of money that gets out of city budgets ahead of anything else.

Senator WILLIAMS. Could I interrupt with a question?

Mr. WHYTE. Yes.

Senator WILLIAMS. Have you had experience in Wilmington with using the Neighborhood Youth Corps summer employment for young people and, with this availability, using them in parks?

Mr. HASKELL. Yes, we had an extensive program relative to our population. When we first tried it, it wasn't nearly as successful as it developed in later years. We profited some by our mistakes.

You have got to have really adequate supervision. You can't just take a bunch of kids and say, "OK, now, you go out there and work with those other kids," and have it work all right. You have got to have really a training period, maybe only 3 or 4 days, but a real adequate training period.

Then you have to have some discipline so the guys that are going out there to try to work with these kids—that they are supervised themselves. There is a tendency in summer employment or the Job Corps kind of thing to worry about getting the money into the hands of the poorest kids and the program itself is not so important.

I think when we did good supervision—and I hope we did that in the latter years—we got a lot out of it. And we got a lot out of it even with less people in the end.

And our swimming pools and all of our recreation facilities really worked quite well in the last year. I think the crime rate reflected it. We went down 50 percent our last year, and this year it is continuing down. I ended office in January. They are continuing right down. I really think recreation is a major factor.

Senator WILLIAMS. Let me not interrupt again.

Mr. WHYTE. Well, I would just conclude by saying I think this kind of program money, people money, is a fraction—it's chickenfeed—as far as other costs. But since it is so often the thing that gets cut out or not even put in in the first place, the language in the bill should not only specifically include programing but might in some way make grants for recreation areas contingent on a program.

Any kind of leverage S. 12 could exert on that would have just tremendous effect.

Senator WILLIAMS. You know, when we passed—as a matter of fact, we didn't pass the open space bill in the Senate. We lost by two votes I believe. Senator Dirksen concluded the opponents' debate and he cited the miracle and marvel of Central Park in New York City.

Mr. WHYTE. I remember.

Senator WILLIAMS. His last words in all of that were, "Without one Federal red cent."

But we have reached the point now where cities are in no position to reserve meaningful open acreage without a partnership of a bigger reservoir of money.

Mr. WHYTE. One of the big features in the park is the "Bethesda fountain" which has become a great magnet for teenagers for the whole metropolitan area. It's also a magnet for a great big problem. And the problem is not to be solved just in Central Park—but it is that it isn't being solved somewhere else. And Federal money and programs are doggone important for them.

[The prepared statement of Mr. Whyte follows:]

STATEMENT OF WILLIAM H. WHYTE, TRUSTEE, AMERICAN CONSERVATION ASSOCIATION

My name is William H. Whyte. As a Trustee of the American Conservation Association I have been studying open space preservation in this country and lately have been directing a special study of how people use city space.

One reason there is still some open space left to study is the Title VII grant program created in the Housing Act of 1961. This was the great breakthrough, and thanks to its stimulus there has been a tremendous increase in state and local and private efforts to save land.

But the needs have been mounting, too, and there is abundant documentation on the rapidity with which open space that ought to have been saved has been built upon, and the rapidity with which it is being priced upward. A program of the magnitude envisioned in S. 12 is of crucial importance.

In the very growth pressures that threaten open space, however, lie great opportunities—and this is the feature of S. 12 that I would like to concentrate on. Because of its provisions for anticipating future development, it could help harness development pressures on open space for the preservation of it.

This is not as paradoxical as it may sound. What happened to residential development patterns over the past ten years will illustrate. During the '60s there was an encouraging shift towards cluster, or planned unit development. By concentrating his housing on the most buildable parts of a tract the developer could leave the bulk of the space open and unconcreted. With good land planning, this space could be fashioned into a functional open space system, providing not only individual patios and gardens for the dwelling units but recreation areas.

Land planning did get better, and the planned unit developments which have been going up these past years are a vast improvement over the land wasting pattern that was typical of the immediate post-war era.

But one great opportunity has gone unseized. With few exceptions, the open spaces of each development have been planned with not much relationship to future developments in the area or, in fact, to the existing open spaces of the communities. One developer, for example, will use a stream that runs through the property as the spine of a walking and recreation area. The next developer doesn't. He puts the stream in a culvert and provides his open space somewhere else. The stream eventually re-emerges in a weedy expanse of second growth land being held for capital gains. A half mile beyond it crosses the site for a new joint high school. A fine opportunity for a unifying open space corridor was there for the asking. Such opportunities are being squandered. Instead of a *system* of open spaces, in sum, there has been a conglomeration of individual spaces, and the sum of the parts has not made much of a whole.

Where does the fault lie? The blame here can be fastened only in part on the developer. Unless his is an extremely large development, he is hardly the man to do the over-all land plan for a community. That is the community's job. Because of the way planning and zoning machinery is set up in most communities—and because of the absence of any sizable funds for advance acquisition, communities have grappled with the problem on an ad hoc, project-by-project basis.

S. 12 would mandate precisely the kind of machinery that is needed to integrate development space and community open space.

The Bill will undoubtedly be criticized for coupling open space preservation with orderly development. People who want to see more open space saved tend to be very chary of any kind of alliance with developers of space, whether they

are government sponsored or private. In the initial draft of the open space program of 1961 there was a provision for a land bank that could be utilized for staged development, as well as for permanent open space. At that time it was difficult enough to sell open space preservation, and the land bank aspect was dropped because it promised to muddy the issue.

S. 12 money, the Bill indicates, is essentially for permanent open space, not land for subsequent development. Nonetheless, it could certainly complement any program for orderly development of new communities and there are lessons to be learned from the federal open space program in this respect. Generally speaking, the kind of open space that has proved most precious to save, from both the resource and the recreational point of view, has tended to be space that ought not to be built upon, or is very difficult to build upon. Flood plains are an example of the former; steep wooded slopes of the latter. All too often, it is true, developers have built upon flood plains and upon steeply wooded slopes, but that they have done so is due to a lack of elementary guidelines and effective planning and zoning by the community. The kind of development that is most economic in the long run is the kind that respects land forms: the reciprocal is that intelligent open space preservation enhances the land that is developed.

Another feature of S. 12 that deserves stronger support is the provision that grants can apply to operation and maintenance for the first four years of the project. At first glance, it might appear that this provision would lower the leverage power of grant funds to save open space, and some people may argue that it would be better if the federal dollars were rifled at acquisition only. Many of us who have pushed for open space programs once so argued. The fact is, however, that local governments have become increasingly hard put to match capital funds, when they have little enough available in their operating budgets to maintain open spaces they already have. For this reason many communities have not applied for grants for open spaces that should have been saved. By helping to meet the initial brunt of the new operating costs they will incur, this provision of S. 12 could stimulate more acquisition, rather than less.

I would like to offer a recommendation. The most important kind of money for a recreation space is program money—money for people to supervise activities, to train other people, and to enlist people of the neighborhoods. In any budget crunch this is just the kind of money that gets sacrificed.

Regular operating and maintenance is important, of course—money for lights, repairs, keeping the place clean, and so on. But the physical housekeeping doesn't mean much unless the park or the playground is well used by people—and a vigorous program effort can be the vital key to this. This is particularly important in the center city—low income neighborhoods especially.

It is widely assumed that the key problem in such areas is overuse of recreation space—and that the need for more space is so great that the provision of it will attract hordes of children. But this is not the case. If the research of our group is any criterion, the big problem in such areas is *under-use* of recreation space. Some recreation areas are indeed used to capacity; far too many, however, are used only sporadically, and many are almost empty most of the time. This is a somewhat dangerous point to raise, since it can be twisted to justify the contention that there isn't much need for more recreation space in such areas. There is a great need for space. But there is just as great a need for people who can make these places work. People who can work with teen-agers, for example, a group that is virtually disenfranchised as far as many playgrounds are concerned, people who can enlist neighborhood groups to help plan activities and run them. There needs to be outreach efforts far beyond the boundaries of the parks. For lack of them, many a potentially valuable space lies dormant, and vandalized.

In principle, money for operations should include money for programs. But it usually doesn't. For that reason, it would be very helpful if S. 12 (in Section 704) specifically stated that moneys would be available to "help finance the operation, maintenance and recreation programming. . . ." It might be advisable to go a step further and to require, in the case of recreation areas, that grants be contingent on a program effort.

"Program" is not a very satisfactory term, and better language could be found. The basic point, however, is simple enough. To get the maximum benefit out of open space for recreation, you need some good people on hand, and there ought to be money for them. This could be the highest leverage money of all.

Senator WILLIAMS. Mr. Truncer.

Mr. TRUNCER. Senator Sparkman, Senator Williams, I thought I would just go through my——

Senator WILLIAMS. Could I interrupt and advise the chairman that Mr. Truncer comes from an area that is all one vast park, Lincroft, N.J., so it is a beautiful area. And one of our colleagues spends as much time as he can visiting friends in the neighborhood, Senator Randolph of W. Va. He will tell you about Lincroft if you are not familiar with it.

Mr. TRUNCER. What I would like to do is point out where we are located, which is in the New York metropolitan area on the southern edge, with frontage on the Raritan Bay and the Atlantic Ocean.

The county extends almost across the State.

Historically, it is a rural, rich agricultural county some 477 square miles, now with a population approaching 50,000 people, with some 53 municipalities.

I would like to also point out that we are facing problems in carrying out at the county level an open space and park plan within this urbanizing county.

Fortunately, our county board of freeholders in 1954 did appoint a county planning board. They did carry out a comprehensive planning program. And in 1960 the county's first open space and park plan was adopted.

The present park system was created as a result of the implementation of this plan in 1961.

Since 1961 our county park system has developed an active program which includes land acquisition as well as construction and development of recreational facilities, also the initiation of an ongoing recreation and outdoor education program.

During this period of time since 1961 we have submitted 11 HUD open space programs totaling something in excess of \$7 million, of which \$3 million were not approved for lack of funds.

Under the previous HUD open space program, these projects would have been eligible, as you know, for 50 percent Federal funding.

In addition, some 32 municipalities in the county have filed application for an additional \$7.6 million.

We have been experiencing a very rapid urbanization with a population increase that is, depending on the year you use, computed to be something in the vicinity of 35 people a day.

In 1954 the county had 2,486 farms, and today we have—as close as we can figure—783 farms remaining.

During the past 7 months of this year the county planning board has reviewed some 334 minor subdivisions, involving more than 2,900 acres of land. A revised county open space and park plan was adopted in 1970 and now delineates the eventual acquisition and preservation in county ownership of something more than 12,000 acres.

Up to the present time we have acquired approximately 2,500 acres through acquisition and donation, with an additional 1,200 acres authorized for purchase during this current year.

Presently our county park system equity is something in excess of \$10 million, which includes private contributions in excess of \$3 million. To date more than 381 acres of land have been donated for county park and recreation purposes, and during this current year we expect an additional 326 acres with a value of something in excess of \$1.2 million to be donated to our county park system.

I think this points out the fact that there is genuine concern on the part of our citizens to see some of our county's remaining open space protected and preserved for future generations.

As you can imagine, land values in our county have risen very rapidly. Our records indicate a 59 percent increase in value of land over the period of 1965 to 1972, which represents something in the neighborhood of 11 percent annual increase.

In one case this past year farm property that was appraised at \$4,800 per acre now today has an appraised value of \$6,300 an acre, something that occurred in about a 10-month period.

In another case I can cite lands we were interested in acquiring about a year ago appraised at \$2,100 an acre now have a value something in excess of \$4,500 an acre.

So that, quite frankly, some of the early purchases that were made 10 years ago at \$83 an acre look like a real bargain.

Our county's present population is expected to increase in the next 29 years to more than 1 million people. Unfortunately, we don't expect to experience an increase in our land area. We do anticipate multi-family housing units to continue to grow. The labor force, income, housing, business, schoolchildren, leisure time are also expected to increase.

Over the past 20 years Monmouth County has carried out an active comprehensive planning program and has prepared and adopted a countywide open space and park plan. The problem I think, as you can imagine, is now finding the financial resources necessary to carry this plan to completion.

In light of the rapid growth, escalating land prices and competition for the remaining open space in our county, it is imperative that we have the financial resources to enable us to move rapidly in reaching our open space and park goals before the opportunity is lost.

I also comment that, with Mr. Whyte's reference to working with the private sector in carrying out a total plan, quite frankly we feel this is going to be the only way that we are going to be able to accomplish the goals that we have set forth in our countywide program.

Senator WILLIAMS. Mr. Chairman, that was going to be my first question, observation and question. It seems to me that a county like Monmouth, N.J., most completely lends itself to this companionship of public open space planning and private development. This county really, in terms of developers' ambitions and individuals' home desires, is just bursting, isn't it?

Mr. TRUNCER. Yes; in fact, the attributes of the county are attracting the people which ultimately are undoing some of the things that attracted them there to begin with.

Senator WILLIAMS. Yes; I am close to this and observe it and see the people from our New Jersey cities looking to this area and farther south but particularly to Monmouth County as a desirable place to get out with a little bit of room to move around in and some of the beauty of open space.

But I will tell you this: Unless your kind of planning goes into it, their hopes and dreams will be again built over.

Mr. TRUNCER. That is right.

Senator WILLIAMS. Unless there is a reservation of open space for everybody.

Excellent. Thank you very much.

The CHAIRMAN. Thank you. I think that was a wonderful presentation of this program. We are indebted to you.

Mr. RETTIE. Mr. Chairman, we have some additional comments which I would just like to leave for the record if I may with respect to several of the bills that are now pending before you which we would like to include in the record.

The CHAIRMAN. Fine. We will be very glad to have it.

[The document referred to, statements of Mr. Truncer and Mr. Rettie, and additional material relevant to the matters discussed on this day follow:]

RECOMMENDATIONS ON COMPREHENSIVE HOUSING AND URBAN DEVELOPMENT LEGISLATION TAKING INTO CONSIDERATION S. 12, S. 1743, S. 1744 AND REVISED COMPREHENSIVE PLANNING LEGISLATION

1. A strong statement of national goals and priorities should be included in any legislation but it is particularly important in legislation of this magnitude and potential impact. There is a great need for leadership on the part of the Federal government in directing the efforts which result from the expenditure of national resources in areas of recognized national need. Certainly the various facets of community development are mutually dependent on each other for their solution and for the creation of better communities, but there are discernible areas of greater need and of greater municipal neglect. Whatever form comprehensive housing and urban development legislation takes, it should include a strong statement of national goals and priorities (incorporating those in S. 12) and should direct the interrelated use of funds.

2. There has been a certain amount of schizophrenia among urban experts about the direction of Federal assistance. This has been institutionalized in existing grant programs and we do not feel that the attempt to bring order to such chaos will be successful as proposed in the legislation pending before this committee. If planning funds are directed to the states for further dispersal, as is rumored, how do we assure that proper assistance for coordinated planning is being received by those eligible for the "block grants?" HUD has through various incentives and grant programs alternately and simultaneously reinforced regional planning bodies, semi-autonomous special purpose agencies (RLA's), state and local units of governments (including special districts) and designated areas of towns and cities (Model Cities) which vie with each other for jurisdiction. Now there are plans to straighten this all out, but it is being proposed in an extremely helter-skelter, hodge-podge way. First, it was proposed that only units of general purpose local government could receive funds. The counties and states and regional bodies and special districts were not too happy with this solution though there are good rationales for it. It does cover the people, but is it really what we want our urban planning and programming structure to be? The answer is generally no; we want it to cover an area in a comprehensive, perhaps regional way. The proposed Better Communities Act (S. 1743) is only likely to slow down that process. It weakens the more regional bodies such as special purpose districts which are usually creatures of state government, do not have vested, jurisdictional interests, and might evolve into coordinated general regional governments. Instead, S. 1743 would strengthen each separate unit of local government in an area. We do not think that special purpose districts which are increasing in number should be excluded from assistance, although we do think coordinated planning is essential. We would suggest that there be enough flexibility in directing funds to allow for special situations.

3. An increasingly important feature in community development is citizen participation. The process of allowing and encouraging citizen involvement in decision-making can be seen to lead to increased community pride and to citizen realization of problems and opportunities. We would favor very strong Congressional direction for citizen involvement. The electoral process is not enough. It would be the unusual town that voted out a mayor because he didn't listen to the needs of the poor for a park.

4. We would also favor some Congressional direction to put funds into poverty areas. A large part of an allocation under all proposed formulas is heavily weighted on factors involving poverty, but there are no incentives to reduce these factors. In fact, it could even be argued that the incentives are to keep the poor

areas poor so you don't lose any money. Some percentage of funds should be directed to low-income areas to meet the needs of low-income people.

5. Along the same lines, we would like to see the use of the proposed Secretary's discretionary funds directed on a priority basis to two worthy but sometimes unchampioned, unaddressed, and sporadic needs—Historic Preservation and New Communities. The old and the new might at first glance seem strange bedfellows, but they both deserve national attention and a Congressional expression of priority. New communities are eligible under existing legislation for supplemental community development grants. If we are serious about the need to develop new communities, particularly ones of moderate size, then we believe it is essential to help make those communities as good as possible. There are things we will and should ask of a developer—social, racial, economic, and commercial-residential balances—but we must also be prepared to help. Supplemental grants are and should continue to be that extra boost and extra expression of Federal commitment. It is interesting to note that new community developers work hard to save such things as old barns in order to perpetuate a sense of character and tradition. These developers recognize what local officials sometimes forget—that civic pride is very closely tied to the character and traditions of the community. It is a deeply ingrained American trait to use it up and throw it away. Too many good and sound, but perhaps run-down, sections of town have been flattened by this thinking. In addition, all too often what replaces the old is not really better. It's newer, but is it well-designed, attractive, comfortable? Could the old one have been fixed up for less? Perhaps it is even worth a little more to us to save our cultural resources. Federal assistance frequently can create opportunities, stir thinking and make the difference.

6. There are three features of S. 12 which could and should be included in any legislation which involves the acquisition and development of open space land. They are assistance for operation (which should include programming) and maintenance; the strict review, prior to Federal approval, and strong replacement language for conversion of open space land to other purposes; and the provisions for loans which will permit grantees to take advantage of limited opportunities to purchase open space and help stave off increased costs due to escalating land prices.

STATEMENT OF DWIGHT F. RETTIE, EXECUTIVE DIRECTOR, NATIONAL RECREATION AND PARK ASSOCIATION

Mr. Chairman, I am Dwight F. Rettie, Executive Director of the National Recreation and Park Association and on behalf of NRPA and the members of this panel, I want to thank you for the opportunity to appear before this subcommittee on the important urban legislation you are considering.

The National Recreation and Park Association is the nation's principal public interest organization representing citizen and professional leadership in the recreation and park movement in the United States and Canada. The National Recreation and Park Association's membership of some 18,000 includes professionals working in public park and recreation agencies, members of policy making boards and commissions, educators, leaders in the private recreation and leisure industry, and concerned lay citizens. We are dedicated to improving parks, recreation and leisure activities.

The members of our panel have been selected for the range of expertise and the multi-faceted perspectives that they have on open space and its relationship to community development. I will introduce them in the order that they will address the committee:

(1) Mr. Harold G. Haskell, Jr.: Mr. Haskell is a citizen member of the NRPA Board of Trustees. In addition, he is a successful businessman, politician and community leader. He is President, Chairman of the Board and Chief Executive Officer of the Abercrombie & Fitch Company. He has served with distinction in the U.S. Congress as the Congressman from Delaware and also as the Mayor of Wilmington, Delaware. Mr. Haskell was on the Advisory Committee to the White House Conference on Aging and is presently a director of the Delaware Mental Health Association, the Wilmington YMCA, the Boy Scouts of America and is a trustee of the Delaware Society for Crippled Children. He is also a member of the Urban Coalition and NAACP. Mr. Haskell's endeavors reflect his strong concern for our urban communities and for the quality of life of our people.

(2) Mr. William H. Whyte: Mr. Whyte is a leading authority in many fields. His books include *The Organization Man*, *Open Space Action*, *Cluster Development* and *The Last Landscape* and he continues to pursue his interests in community development through research, most recently through his involvement in a project studying how people utilize urban spaces. Mr. Whyte is a member of NRPA and is also a trustee of the American Conservation Association, Inc.

(3) Mr. James J. Truncer: Mr. Truncer is a professional member of the National Recreation and Park Association. He holds B.S. and M.S. degrees from Michigan State University in Park and Recreation Administration and his career has exposed him to a wide variety of park and recreation management experiences at the Federal, state and local levels. He is presently Director of the Monmouth County Park System. Mr. Truncer is President of the New Jersey Recreation and Park Association, one of NRPA's affiliates. He is also a member of the Board of Directors of the National Association of County Park and Recreation Officials, an arm of the National Association of Counties.

Mr. Chairman, in closing we would like to leave with you a list of specific recommendations concerning S. 12, S. 1743, S. 1744, and the anticipated legislation revising the "701" Comprehensive Planning Program. We know that all of these issues will be considered as this committee proceeds to develop the comprehensive housing and urban development legislation that they have indicated they hope to report this year.

Again, we thank you for the opportunity to appear and we would be pleased to answer any questions.

STATEMENT OF JAMES J. TRUNCER, DIRECTOR, MONMOUTH COUNTY PARK SYSTEM,
LINCROFT, N.J.

I am James J. Truncer, Director of the Monmouth County Park System, New Jersey Park System, which is a position I have held for the past nine years. Monmouth County is located on the southern edge of the New York Metropolitan Region, midway between New York City and Philadelphia with frontage on the Raritan Bay and the Atlantic Ocean. Monmouth County embraces some 477 square miles with a population of approximately 500,000 people living within 53 municipalities.

I would like to take this opportunity to apprise the subcommittee of the problems which our agency faces in carrying out an adopted open space and park plan in one of our country's more rapidly urbanizing counties. Fortunately, the Board of Chosen Freeholders of Monmouth County created a County Planning Board in 1954 and as a result prepared and adopted the County's first open space and park plan in 1960. The present County Park System was created as a result of the implementation of this plan in 1961.

Since 1961 the County Park System has developed an active county park and recreation program which includes the acquisition of open space and park land, construction and development of recreational areas and facilities and initiation of active on-going recreation and outdoor education programs. During this period of time, our agency has submitted 11 HUD Open Space Projects totaling more than \$7,652,507, of which \$3,228,918 were not approved for lack of funds. Under the previous HUD Open Space program, these projects would have been eligible for a 50% Federal grant. In addition to county open space and park projects, 32 municipal applications have been filed for open space assistance for projects totaling \$7.6 million.

Our County has been experiencing a rapid urbanization with an average population increase of 35 people per day. In 1954 Monmouth County had 2,486 farms. Only 783 farms remain today. During the first seven months of 1973, the County Planning Board has reviewed 334 minor subdivisions and 68 major subdivisions, involving more than 2,932 acres of land. A revised county open space and park plan was adopted in 1970 and now delineates the eventual acquisition and preservation in county ownership of more than 12,000 acres. Up to the present time we have acquired approximately 2,500 acres through acquisition and donation, with an additional 1,200 acres authorized for purchase during this current year.

Presently our county park system equity of more than \$10,000,000 includes private contributions of \$3,044,075. To date more than 381 acres of land have been donated to our county park system. During this current year we expect an additional 326 acres with a value of more than \$1,262,500 to be donated to our county park system. The fact that we have been fortunate in receiving such donations indicates to me that there is a genuine concern on the part of our

citizens to see our county's remaining open space protected and preserved for future generations.

As you can imagine land values in Monmouth County have been rising very rapidly. Our record indicates a 59% increase in the average value of land for the period 1965-1972, which represents an annual average increase of 11.86%. In one instance farm land valued in August of 1972 at \$4,800 per acre has risen by June of 1973 to a value of \$6,300 per acre.

Our county's present population is expected to increase in the next 29 years to more than one million people. Unfortunately, our land area is not expected to increase. We anticipate that single and multi-family housing units will continue to grow. The labor force, income, housing, business, mobility, school children and leisure time are also expected to increase.

Over the past 20 years Monmouth County has carried out an active comprehensive planning program and has prepared and adopted a countywide open space and park plan. The problem we now face is that of funding the financial resources necessary to carry this plan forward to completion. In light of the rapid growth, escalating land prices and competition for the remaining open space in our county, it is imperative that we have the financial resources to enable us to move rapidly in reaching our open space and park goals before the opportunity is lost.

STATEMENT OF DAN ROSTENKOWSKI, REPRESENTATIVE IN CONGRESS FROM THE
STATE OF ILLINOIS

Mr. Chairman, Members of the Committee, I would like to thank you for this opportunity to appear before this distinguished Committee to discuss the Urban Parkland Heritage Act. As the chief House sponsor of this creative new legislation, I would like to take a few minutes this morning to point out some of the basic reasons why I feel that the concepts embodied in it are essential to the future welfare of countless Americans.

Mr. Chairman, as a long time proponent of city parklands, and as the chief architect of the original Open Space program, I know that you share my desire to see recreation areas flourish in our cities.

The inclusion of the Open Space program in the Housing Act of 1961, marked the first concrete recognition by the the Congress of the desperate need in this Nation for preserving and expanding urban parks. The Open Space Program was designed to enable urban governments to obtain inner-city parklands for the recreational needs of their citizens. This need was particularly acute in the case of low income residents whose mobility was limited and whose free time was increasing.

Since 1961, our metropolitan population has doubled. We now have 90% of our people living on 10% of our land. Our cities are bloated. The constant increase of population, of construction, of traffic and of pollution has tripled the demand for inner-city recreation land. Unfortunately, the Open Space Program has not been able to fully meet this demand.

Each year the financial pressures on our urban areas have multiplied. In 1972, several large cities were forced into bankruptcy. As one city official put it, "There isn't enough money to collect the trash, so how can we buy a park."

I believe it is time that we looked at our nation's urban areas more realistically. Truly most of us live and work in a major city; 90% of our population—180 million people!

There are 462,000 people in my own district in Chicago. They are all forced to live with the noise and with the dirt and with the over-crowding that has become commonplace. The people in my district and the people in every city in the United States need open-space. Yet, for many, there is no such open space to be found. Most city dwellers cannot afford to travel 100, or 10, or even 5 miles outside of their cities in order to reach adequate parkland areas. As a result, their added leisure time increasingly becomes a frustration. Thus, what could in theory be valuable, self-enriching time, becomes wasted time.

The main force of the Urban Parkland Heritage Act is the creation of the new Urban Parkland Heritage Corporation. Both state and local governments will be able to contract with this independent corporation for loans and grants to purchase and maintain parks. The Corporation will have only one purpose: to help urban governments develop a balanced urban environment. As a completely independent body, the Corporation will be free to negotiate with any state or local government for the maintenance of existing parkland or for the purchase

of new parkland in inner-city areas. Special emphasis will be placed on low income and poverty areas. The Corporation will assist in long-range planning for metropolitan areas and will encourage and coordinate local efforts toward developing open-space and other public urban land. Also, it will assist in the acquisition and restoration of sites and structures of historic or architectural value.

Mr. Chairman, I would like to congratulate you and your fine staff for designing this innovative and sophisticated park purchase and maintenance plan. As witnessed by these hearings, your personal concern in this area has been the prime motivating force in the Congress in furthering the preservation of our cities.

For all of us who live in America's cities, particularly for our youth, recreation areas and the facilities that they provide are a necessity for healthy living. The people in our cities need land. They need room to move in. They need a place to recreate and to refresh themselves. If our cities cannot provide such places, then they are surely doomed.

I believe that with the enactment of the Urban Parkland Heritage Act of 1973, we can begin to make what is now only bearable, truly livable.

Mr. Chairman, unfortunately it was impossible for a representative of the Chicago Park District to be with us today. They have, instead, asked me to request unanimous consent that their statement concerning the Parkland Heritage Act appear at this point in the Record.

STATEMENT OF THE COMMISSIONERS OF THE CHICAGO PARK DISTRICT,
CHICAGO, ILLINOIS

Mr. Chairman and Members of the Senate Subcommittee on Housing, and Urban Affairs, the Chicago Park District was chartered by the Illinois Legislature in 1933 as a governmental agency for the purpose of operating a Park District within boundaries coterminous with the City of Chicago. It is governed by a Board of five Commissioners and managed by a General Superintendent and members of his Staff.

Statutory provisions are set forth in the Charter granting authority to levy taxes and issue general obligation bonds within certain dollar limits specified by the Illinois Legislature. Additional provisions empower the district to construct facilities and provide various organized and unorganized recreational programs of both indoor and outdoor nature.

To accomplish this purpose 4,600 full-time employees and 1,000 part-time employees are necessary to operate numerous facilities and conduct various programs in 529 parks, playgrounds, and playlots covering a span 7,016.77 acres of land. The physical facilities which we provide for the 3,500,000 residents of Chicago include: a major Planetarium, 14 major gardens, 2 major conservatories, 2 zoos, 72 outdoor swimming pools, 29 indoor swimming pools, 30 beaches which stretch over 28 miles of shoreline, 7 harbors and marinas, 4 golf courses, 244 fieldhouses including 177 gymnasiums, 825 softball and baseball fields, 632 tennis courts, 199 spray pools, 29 bicycle paths, 144 day camps, and 434 children's playground apparatus areas. The Chicago Park District's recreational programming includes: 19 Senior Citizen Centers, 64 Craft shops, drama programs at 103 locations, music programs at 52 locations, art programs at 108 locations year-round programming at 224 locations, 14 leisure-time centers for the mentally retarded, and 3 special leisure-time programs for the physically handicapped. Last year without any Federal assistance, we co-sponsored with the Joseph P. Kennedy, Jr. Foundation for the second time, the International Special Olympics for the Mentally Retarded, which was held at our Soldier Field facilities in Burnham Park.

All of our regular programs and facilities, with the exception of our harbors and golf courses, are offered free of charge to the public. Our facilities and programs annually serve over 80 million visitors each year. We also house Chicago's seven major museums and aquariums in our parks.

As you can see, the scope and nature of our services are wide and varied. Wherever and whenever possible we have tried to finance our facility acquisition and development and the conduct of our programs without Federal assistance. However, with the increasing demand for more leisure-time facilities, open-space areas, and recreational programming and the spiraling costs that are associated with these services and programs, we are facing the same financial crisis which has already taken its toll in many of the country's largest urban

park systems. The need for more Federal funds and legislation that will aid the country's urban park districts and recreation departments is urgent.

Our large cities are facing a continual fight to preserve the little open-space land and few natural areas that still exists within its boundaries. With the help of Federal programs such as the establishment of an Urban Parkland Heritage Corporation, our cities may be able to meet this need.

Prior to January 5, 1973, it was possible to satisfy to a moderate degree, based on priorities and population density, demands of communities within Chicago for parks, playgrounds, and playlots and the development thereof through Grants-in-Aid from the Department of Housing and Urban Development. The Chicago Park District established a Bond Fund Program so that land could be acquired and developed under previously approved application to H.U.D.

On January 5, 1973 the Secretary of H.U.D. issued an order to freeze funds, refuse new applications, and reject applications filed but not acted upon. Thus the Bond Fund Program which was based on 50% matching funds basis was, of necessity, stretched to 100% full funding by the Chicago Park District. As a result the planned Land Acquisition and Development program was greatly curtailed, resulting in considerable dissatisfaction among the communities.

The proposed Amendment to Title VII of the Housing Act of 1961 is a worthy substitute to the Land Acquisition and Development Grants-in-Aid previously administered by H.U.D. Its passage would enable the Chicago Park District as well as other Park and Recreation districts in all States, as well as Illinois, to re-create and continue their programs as committed to their communities.

The passage of this Amendment would also be a step in the right direction to correct an inequity to Parks and Recreation Districts that appears in the Revenue Sharing Act previously passed by Congress. The Act limits participation to States, Local Governments, and General Purposes Districts. Our District and others of this type are classified as Special Purpose Districts and thus are ineligible to share.

It offers hope and encouragement to park administrators in that passage of this legislation would permit us again to apply for grants-in-aid assistance and the possible discharge of community commitments for land acquisition and development. Its passage would also tend to alleviate the oversight which eliminated us from participation in the General Revenue Sharing Act.

The Commissioners and Staff of the Chicago Park District wish to express their appreciation for the opportunity granted by the members of this Committee to submit this statement.

Mr. RETTIE. We are very grateful for the opportunity to appear.

The CHAIRMAN. Thanks to all of you.

Senator WILLIAMS. Superlative.

Next witness is John M. Elliott, chairman of the urban committee citizens' advisory council to the Pennsylvania Department of Environmental Resources, and member, Philadelphia City Planning Commission.

We are pleased to have you share our forum on this bill this morning.

**STATEMENT OF JOHN M. ELLIOTT, CHAIRMAN, URBAN COMMITTEE
CITIZENS' ADVISORY COUNCIL TO THE PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES, AND MEMBER, PHILADELPHIA CITY PLANNING COMMISSION**

Mr. ELLIOTT. Thank you very much, Senator.

Before I begin my analysis of S. 12, I would like to thank you as a neighbor of yours from Pennsylvania for the substantive work that you have done as a Member of the Senate, not only on S. 12 but on what I consider to be the very difficult, protracted and complex legislative issues of our time. You have led the way on progressive and needed occupational safety and health, mass transit, housing, and other difficult legislation.

A lot of people can get up and sing the hallelujah chorus when they vote for bills, but it is very difficult to be the godfather on this legislation and to lead it on its difficult way from concept to reality.

As a neighbor of yours from Pennsylvania I am happy to say that I have followed your career on these difficult issues and think you do a commendable job on them.

Senator WILLIAMS. I very much appreciate that, Mr. Elliott.

Mr. ELLIOTT. With regard to the legislation that we have before us today, it is legislation which has a very special significance for me because I have had a practical opportunity to perceive this problem from several different levels.

I am a member of the State environmental quality board. The board is an official body of the Commonwealth of Pennsylvania which sets environmental policy for the State. I am also a citizen member of the Philadelphia City Planning Commission which has six citizen members and three from the mayor's administration on that nine-member panel.

I am also the chairman of the urban committee of the citizens advisory council to the State department of Environmental Resources. We are an official agency of the State, and we are interested in the urban implications of environmental issues such as your S. 12 speaks to.

I am very well aware that your legislative agenda is clogged with many challenges—land use, energy, transportation issues. However, I think that there is no more visible manifestation of a congressional commitment to the cities than that that can be realized through S. 12.

Philadelphia, is a city of hope. We are a city that has thousands of undeveloped and underdeveloped acres. We also have a viable working class representative of all ethnic and racial backgrounds still residing in our communities in the city. And we have a tremendous regional asset in the largest municipal park in the world. Fairmont Park which has upwards of 4,800 acres.

It is a park that is used by all. It is a park that physically touches all varieties of neighborhoods as you go through the city of Philadelphia. It is also a park which is plagued with a lack of operating and maintenance funds. Twenty percent of the State positions in the park are presently unfilled now because of the budgetary crisis in the city.

The city of Philadelphia has a substantial operating deficit. The school district of the city of Philadelphia is also saddled with a tremendous deficit. Our mass transit system in Philadelphia and the four abutting southeastern Pennsylvania counties was forced to borrow \$7 million because of a deficit which the legislature last week just funded.

But when you look at the priorities that the cities are confronted with, its operating budget, our educational system, or mass transit system, you can understand why 20 percent of the positions in the largest municipal park in the world are today unfilled.

The park is confronted not only with this deficit with regard to manpower and personnel, but we are trying to come to grips from a planning point of view with erosion and sedimentation, a tremendous problem in the park, which empties in the Schuylkill watershed and the collateral Penny Pack Park system which abuts the Delaware

erosion and sedimentation are the No. 1 water pollutants in the Commonwealth of Pennsylvania.

The legislative you have introduced, S. 12, was greeted with enthusiasm in a February 1972 Philadelphia Inquirer article. This article is part of my prepared statement, which in the spirit of brevity I am trying to highlight now—it highlighted how your legislation would respond not only to the need of Fairmont Park but to the emerging needs of many communities in Philadelphia.

The Schuylkill River Park which would connect the museum with the Gray's Ferry areas; the restoration of the Manayunk Canal; The Queen Village, and Southwark Renaissance; expanded recreational opportunities for Mantua, South Philadelphia and North Philadelphia.

The significance of S. 12 goes beyond Philadelphia. It reaches into our medium-sized cities. I spoke to the mayor of Lancaster, Mayor Thomas J. Monaghan, to Mayor Louis Tullio of Erie—Pennsylvania's third largest city—and to Altoona City Solicitor N. John Casavaub. They are progressive and concerned. They are all very interested in this legislation because they are very well aware that revenue sharing has cut out the categorical grants that had been used for park acquisition. These cities too have been limping through a park operation and maintenance crisis where they couldn't maintain their parks, where they couldn't develop the smaller neighborhood parks really needed to give the cities, which are older cities located in the heart of expanding metropolitan areas, breathing room and the amenities they need to make them livable in the '70's.

The planning commission of the city of Philadelphia, on which I serve, has recently entered into a very ambitious program between the city of Philadelphia and abutting Montgomery County to add in excess of 400 acres to the Fairmont Park system; 240 of these acres would be located in the city of Philadelphia in the northwest section of Philadelphia known as Roxborough, which is a very representative community. It goes from high to low income citizens.

These 240 acres that would be added to the park at a cost of about \$1,000 an acre are now jeopardized because the funding for the acquisition of these 240 acres is now a hit-and-miss process which is going to depend on the amount of money in the Secretary of the Interior's contingency fund when the fiscal year lapses.

We have committed 30 percent funding from the State which comes out of a \$500 million bond issue the voters of Pennsylvania passed about 5 years ago. We have 20 percent in our local funds through the efforts of a gallant citizen, a man named Lawrence Smith, who has donated considerable acreage in the park to the city.

However, between the real and the ideal, the shadow falls. Where is the remaining 50 percent Federal funding coming from?

We now have a very imprecise Federal funding vehicle. I don't know if it is because of strictures placed on HUD funding opportunities or it's because of the hit-and-miss nature of what moneys are going to be available in the Secretary of the Interior's contingency fund.

But the addition of this 240 acres to our park system in the city of Philadelphia is of great consequence. Our park system where this land would be added ties into existing Fairmont parkland and also abuts the Schuylkill River. There is a flood plain that suffered terribly during Hurricane Agnes. Fairmont Park also abuts German-

town, a very healthy and integrated community. It abuts the Manayunk-Roxborough area which is a very viable community in our city. And it also abuts the Mount Airy-Chestnut Hill area of the city of Philadelphia.

So you can see it is a very representative opportunity if we in the city of Philadelphia can join hands with Montgomery County, the most affluent county in the State, and add an additional 400 acres to our regional park system. It is a step in the right direction. But it is jeopardized because of imprecise funding, a problem which your legislation would cure.

Now, the city of Philadelphia has advised me that if your legislation passed the city can look to annual park funding in the area of \$10 million, which is more than three times the amount of money they presently receive from the State bond issue. We need the money to fill the 20 percent staff vacancies in the park. We need the money for park operation and maintenance. And we need the money to fill a desperate void in effective park planning.

I would like to commend you for your legislation recognition of the special needs of low-income areas and also section 705(a), provision for citizen participation.

In conclusion, I would like to offer a few specifics which I would respectfully suggest your committee consider to clarify and expand certain provisions of your legislation.

For example, section 704(b) authorizes operation and maintenance moneys only for the first 4 years of a park's operation. I would respectfully suggest that the term "operation" is not defined in section 702, and we would like to make it very clear that our reference to "the first 4 years of operation" would not preclude an existing park, like Fairmont Park, from getting a blanket grant to assist the operation, maintenance, and planning aid it needs to continue its services as an oasis of green sanity in the midst of a tremendously burgeoning metropolitan area.

I would also respectfully suggest that section 704(a) (2) recognition of special impact circumstances for which allow 90-percent funding where a particular program would give a very balanced regional perspective to development be extended so that 90-percent funding is extended to all funding of this legislation, placing parks and people on a parity with highways, which presently enjoy 90-percent funding.

The present legislation is drafted to allow 75-percent funding in special impact circumstances of 704(a) (2). I spoke to the office of the finance director of the city of Philadelphia, and they thought if the funding could be spread on a 90, 80, 70, 60, 50 percent declining Federal funding scale it would provide a better opportunity for the operating budgets in the cities throughout the country to take advantage of these park funds. For example, at the end of 5 years, Philadelphia would be in the same funding situation where it is now under categorical grants. So it would be a tremendous shot in the arm of the operating budgets of the cities, if funding could be more flexibly structured on a declining funding spread over 9 or 10 years rather than beginning from the 75 percent declining funding that is now scheduled in S. 12.

I would also respectfully suggest that 704(b) avoid any narrow construction that would preclude the use of operation and maintenance

funds for presently existing parks. The word "operation" must not be construed to relate just to newly acquired parks, but existing parks must come within the purview of this new and needed funding.

I would also respectfully suggest that the public membership on the Urban Parkland Heritage Corp. be expanded from four to seven public members. This would allow the public to have 7 of 18 members representing the grassroots taxpayers.

I have found from my experience on the planning commission—we hold evening neighborhood meetings throughout Philadelphia—that there is great vision and thrift at the grass roots. If the public representation went from four to seven, there would be a greater opportunity to include ethnic and minority citizens on this very important public corporation.

I would also respectfully suggest that, consistent with the spirit of S.12, that the public membership on the Urban Parkland Heritage Corp. not be comprised exclusively of the type of "silk stocking," higher income people who traditionally find their way onto national panels, but that it be broad enough to include average citizens who come from communities. For example, there is a gentleman named Harry Olson in Philadelphia, the unpaid director of the Manayunk Canal Preservation Committee, who is very adept at doing lots with nothing. This is a guy who as an unpaid volunteer has developed everything from hiking trails to the rehabilitation of an old canal which at one time was a very important transportation link between the anthracite region in Pennsylvania and the economy of the city of Philadelphia.

This type of citizen is out there if they could be found and their energy and commitment plugged into the promise of this Urban Parkland Heritage Corp.

I would also respectfully suggest—and I think this is a very important consideration—that the language of section 704(a)(2) be broadened to embrace an emphasis on underdeveloped land as well as the S. 12's emphasis is on the undeveloped land.

Several sections in S. 12 refer to undeveloped land. In the city of Philadelphia we do have undeveloped land. We have several hundred acres down near the airport in the Eastwick area. We have some left in the northeast and northwest areas of Philadelphia. The northeast of Philadelphia is an area of half a million citizens. It is a tremendous asset larger than the city of Pittsburgh.

But notwithstanding our ability to have the challenge of undeveloped land, we are also confronted with tremendous acreage of underdeveloped land.

The area around Connie Mack Stadium is becoming an embarrassing eyesore. However, it is located close to a very sophisticated transportation complex at the North Philadelphia Station. This whole area should not lose the benefit of your pioneering legislation, because as underdeveloped land it has tremendous park opportunities which are complement industrial, commercial, and residential opportunities.

I think you could play with those words and make sure underdeveloped land within the city received the benefits of your legislation.

In conclusion, Senator, I would also respectfully suggest that

your legislation have written into it clauses to award a premium on imaginative and good land use.

For example, you could tie in larger land use incentives. I know Senator Jackson's bill, S. 268, is now pending over in the House. Your legislation also has tremendous land use implications and offers a lever for good planning.

For example, a park premium in funding could be awarded to regions which vigorously fund their mass transit programs to meet the Federal Clean Air Act of 1970's standards. A park premium could also be extended to cities which develop peripheral parking strategies, such as Philadelphia is developing peripheral parking under I-95, which is an elevated eyesore going through areas of Philadelphia.

Your legislation is a timely and responsive gesture which the cities need as soon as possible.

America's cities are really at the crossroads, and it is not going to do anyone good to wring their hands when a tremendous regional asset such as Fairmont Park, which offers hope and recreation to a great cross section of our community, is decimated and when the tot lots and the community playgrounds and recreational facilities which you seek to encourage are not created.

As a planner, I have attempted to show that good environment and economic progress are compatible virtues which are essential to revitalization of our cities.

I think your visible and tangible funding commitment as manifested through S. 12 is a tremendous step in the right direction, and I am hopeful you can bring it to fruition, Senator.

Senator WILLIAMS. Thank you very much, Mr. Elliott.

Let me ask you just one question. Is the Philadelphia City Planning Commission appointed by the mayor?

Mr. ELLIOTT. Yes; there are nine members: six appointed by the mayor; and the other three are designated in the city charter as the finance director of the city of Philadelphia, the commerce director, and the managing director, all members of the mayor's cabinet. Thus, we have three representatives of the administration and six citizens.

Senator WILLIAMS. So you speak for the commission and you speak for the city when you come here and testify?

Mr. ELLIOTT. I am speaking in my individual capacity as a member of the planning commission. However, I did check with the city and the recreation department in the city and the finance director's office of the city are very enthusiastic about your legislation.

So while I don't have their official imprimatur, I have spoken to them and they are tremendously enthusiastic, as are members of the city planning commission, which also represent the enthusiastic concern of the members of the present mayor's administration which is attempting to expand present park and recreation opportunities.

Senator WILLIAMS. Very helpful statement and very constructive in the ways we might strengthen the bill.

Mr. ELLIOTT. I have it in writing. I mailed it to the committee.

Senator WILLIAMS. It did not arrive in the mails. We know it is on its way, and we will include your statement together with, of course, your testimony.

Mr. ELLIOTT. Thank you, Senator.

[Mr. Elliott's statement follows:]

TESTIMONY OF JOHN M. ELLIOTT*

Senators Sparkman, Williams, and members of the Committee. I appreciate the opportunity of appearing today in support of S. 12. I have had a practical opportunity to observe the necessity for this legislation at several levels. I am aware that your Senate agenda is crowded with land use, energy, transportation, and other issues that have a profound urban impact. However, S. 12 offers a visible and tonic manifestation of Congressional commitment to the cities. It should be enacted as soon as possible.

Philadelphia is city of hope. We have a solid transportation infrastructure which our regional transportation authority is attempting to modernize into a total transportation complex. Philadelphia also enjoys a thriving port, an expanding industrial base, and has recently garnered national recognition for its recently adopted "urban homestead" housing act and for its new HUD assisted program to nip blight in marginal neighborhoods. All these efforts are buttressed by a stable middle-class population spread throughout Philadelphia—in Kensington, West Philadelphia, Germantown, in Northwest and Northeast Philadelphia. The Northeast section of our City with 500,000 residents is larger than the city of Pittsburgh.

All Philadelphia benefits from a magnificent park system. Fairmount Park, with upwards of 4800 acres, is the largest municipal park in the world. This enhances the quality of life in Philadelphia. From center city to the city line, it runs through all varieties of ethnic, racial, and economic neighborhoods. However, Fairmount Park presently has 20% of its staff positions unfilled.

Philadelphia, like many major cities, suffers from an operating deficit; the School District of Philadelphia faces a continuing deficit; and the transportation authority serving Philadelphia and its four surrounding southeastern Pennsylvania counties had to borrow to avoid closing down, until the Legislature recently funded their deficit. Thus, it is unfortunate but an obvious fact that park opportunities are overshadowed by other competing priorities—schools, police, housing—in financially hard-pressed municipal budgets.

Yet Philadelphia is participating with the state in a novel environmental study of the park's Wissahickon watershed to assure that development will not degrade the park. The Philadelphia City Planning Commission has recently undertaken an imaginative park program to develop an expanded city-suburban regional park system. This would add an excess of 400 acres to our park system, 240 acres of which would be in the City's Upper Roxborough area linking parts of the existing Fairmount Park with the Schuylkill River and suburban parkland. However, as T. S. Eliot warned "between the real and the ideal the shadow falls." Philadelphia's dream of expanding its park system faces a fiscal pall. Thirty percent of state funding is committed through a state conservation bond issue; 20% local funding has been contributed by a gallant citizen, Lawrence Smith. But the necessary 50% federal funding is a hit-and-miss proposition depending upon the amount of money available from the Secretary of Interior's contingency funds at the end of the fiscal year. Additionally, the City Planning Commission is negotiating with the State to secure a several hundred acre "Benjamin Rush" park for Northeast Philadelphia, an area where recreational opportunity is vitally needed. Revenue sharing has removed the categorical grants which were used for park acquisition.

This problem goes beyond Philadelphia. Your legislation offers hope to Pennsylvania's medium-sized cities such as Lancaster, Erie, and Altoona. I have spoken to Lancaster Mayor Thomas J. Monaghan; Erie Mayor Louis Tullio, and Altoona's City Solicitor N. John Casanave. These progressive public servants are also desirous of S. 12's passage to support their park programs.

The City of Philadelphia advised me that S. 12 will provide up to \$10,000,000 annually, more than is now received from any funding source. I would respectfully suggest the following specific amendments to approve S. 12:

1. While I commend S. 12's recognition of § 705(a) of the special needs of low income areas, and provisions for citizen participation, I respectfully suggest that public members on the "Urban Parkland Heritage Corporation" be expanded from 4 to 7 public members. This would allow 7 of the 18 members to represent the grassroots taxpayers. I have found from my experience on the Philadelphia City Planning Commission, we hold evening neighborhood meetings throughout Phila-

*Member Philadelphia City Planning Commission; Environmental Quality Board, Commonwealth of Pennsylvania; Chairman, Urban Committee, Citizens Advisory Council, Pennsylvania Department of Environmental Resources.

delphia so working people can participate in the planning process, that considerable concern, wisdom, and thrift exists at the grassroots. Expanded public representation would provide opportunities for ethnic and minority citizens to participate on the Board.

2. Section 704(b) should be clarified. The term park "operation" is not defined in the definition section, § 702. It should be made clear that any reference to "the first four years of operation" does not preclude an existing park like Fairmount Park from obtaining a blanket grant to cover operation, maintenance and planning expenses.

3. I would also respectfully suggest that the special impact circumstances recognized in § 705(a)(2) which allows 90% funding for a program which "would have a special significance in helping to shape economic and desirable patterns of urban growth" be extended so that 90% funding is granted to all park funding projects. This would place parks and people on a parity with highways, which presently enjoy 90% funding.

4. Section 704(a)(2) should be broadened to emphasize "underdeveloped" land as well as undeveloped land. Cities which need breathing space are challenged by "underdeveloped" land, but undeveloped urban land may be a scarce commodity. S. 12 should not discriminate against America's cities.

5. S. 12 should have written into its clauses to award a "park premium" to cities with imaginative programs and good land uses. S. 12 holds considerable land use implications and offers a lever for good planning. For example, a "park premium" could be awarded to regions which fully fund their mass transit programs to meet the mandates of the federal Clean Air Act of 1970. Premiums could also be extended to encourage "peripheral parking" programs which locate parking facilities near mass transit instead of following the traditional Municipal Parking Authority routine of merely funneling more cars into already jammed center city areas.

In conclusion, S. 12 is timely and meaningful. Significantly, this imaginative legislation would allow local government, with full citizen participation, to structure its own priorities. These new parks will uplift our people's spirit, and create vehicles for creativity and decency in an urban society, which is increasingly bludgeoned by noise, congestion, dirt and dismay. Its early passage would be a hopeful and therapeutic asset to Philadelphia's efforts to improve the quality of our environmental, economic and cultural life. It won't do anyone any good to wring their hands after regional assets such as Fairmount Park which offers hope and recreation to a great cross-section of our community is destroyed and when the community playgrounds and tot lots which we vitally need are not constructed.

Thank you for the opportunity of testifying in support of this legislation.

STATEMENT OF BELLA S. ABZUG, REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, after the disturbances of the summer of 1967 in which rioting across the nation cost us 83 lives, 1900 injuries and \$50 million in property damage, the National Advisory Commission on Civil Disorders began an investigation of the causes of the tragedy. The three complaints most frequently encountered in the cities' ghettos were expected: police brutality, overcrowded housing and unemployment. The fourth major grievance was somewhat surprising—lack of recreational facilities in the inner city. According to the Commission's report, recreation grievances were found in fifteen of the twenty cities that accounted for the most serious disorders of the summer of 1967, and lack of recreational facilities was ranked the major cause of disorder in three.

Given the high densities prevailing in large cities, public parks for physical activity and relaxation are a physiological necessity for urban people who lack the means to join private clubs. As well as a biological need for open space, sunlight, a place to move about, the opportunity to enjoy the sight and smell of trees, grass and shrubs, there is an increasing recognition of a human being's psychological need for open space. Parks must no longer be viewed as pleasant urban frills, but rather as vital elements of the city scape.

Dr. Thomas A. C. Rennie of Cornell University Medical College recently conducted a study of the mental health of an urban population using as subjects 1660 persons living in midtown Manhattan. His team of psychiatrists and social scientists found that mental health varies directly with socioeconomic status.

Only 12.5 percent of those in the highest economic and social grouping revealed impairment while in the lowest socioeconomic stratum 47.3 percent were impaired. Although both groups included large numbers that displayed mild to moderate symptoms, there was significant disparity according to status among those who were said to be well. In the lowest socioeconomic group only 4.6 percent were found to be well while in the top stratum 30 percent were well. The results of this study indicate that the poor in our cities are suffering in far greater proportion than the well-off. While parks, open space and recreational facilities are by no means the sole answer, they do contribute tangibly to a healthier social and physical environment.

I applaud the introduction of S. 12, the Urban Parkland Heritage Act of 1973. Besides the city streets, parks and malls are the only open spaces where city residents can enjoy the outdoors. They are spaces where we can read, jog, picnic or bring the children to play. The Act is a long overdue step in the direction of providing sorely needed relief to city dwellers.

New York City with its 41,000 acres of parkland, and Manhattan with its 14,000 acres will benefit substantially from the passage of S. 12. It would replace Title VII of the Housing and Urban Development Act in providing funds for open space. Although Title VII is legally in effect, the Nixon Administration has unilaterally frozen all Title VII funds as of January 5, 1973. At that time only \$50,050,000 of the \$100,000,000 appropriated by Congress had been spent. According to Mayor John V. Lindsay's office, the Administration's impounding of this money has deprived New York City of approximately \$2.4 million under the Open Space Grant Program alone. Although recent judicial decisions such as that of U.S. District Court Judge Charles R. Richey in *Pennsylvania v. Lynn* have ordered release of budgetary reserves designated by Congress for other community development programs under Title VII, no lawsuits have been filed over the Open Space Land Grant programs.

Were the courts to order release of Title VII open space funds, the Urban Parkland Heritage Act still goes further than Title VII in two important areas. First, Section 704(e) provides for greater Federal participation in open space acquisition and development. Title VII allowed 50% grant funding while S. 12 provides up to 90% combination grant and loan funding. Secondly, Section 704(b) allows grant money to be used for *operation* and *maintenance* of open space for up to four years, whereas under Title VII only open space *acquisition* and *development* were eligible activities. While I would like to see the four year limitation on these uses extended, I am pleased to see it included. The reduction of the matching local contribution required under Title VII and the inclusion of operating and maintenance expenses significantly increases the opportunity for "cash-poor" municipalities to take advantage of the Federal open space program.

There is one section of the Act that poses potential problems for densely populated neighborhoods. Section 704(c) states: "No grant or loan under this title shall be made to acquire and clear developed land in built up areas unless the local governing body determines that adequate open space land cannot be effectively provided through the use of existing undeveloped land." This provision could work extreme hardship on the urban areas that are in greatest need of parks and open space. Highly urbanized and densely populated sectors are not likely to include undeveloped land. If this Act is to live up to its name, it must make adequate provision for the truly urban sectors in acquiring land. Often a developed city lot or the parcel on which a condemned or abandoned building stands is an ideal place for a "vest-pocket" park. These small parks serve their neighborhoods well. They are open space areas within walking distance of the numerous small communities existing in a large urban area. As such they play a critical role in the demeanor of everyday life in these neighborhoods. In addition to providing the usual park functions, they frequently serve as a social center for the block—a place for the passerby to stop, for neighbors to meet as friends, for teenagers to gather, for older citizens to find their peers and for families to enjoy a shared experience. We must not forget the play lots, vest pocket parks, city greens and malls, insignificant in size, yet vital in function.

I would like to add one additional thought to S. 12. The Act includes a labor standards section, but has no language prohibiting discrimination. I urge the inclusion of such a provision prohibiting discrimination on the basis of sex, race or other discrimination under Title VI of the Civil Rights Act of 1964 in the appointment of Urban Parkland Heritage Corporation members and under any contract or program carried out or financed through the Corporation's funds.

I am pleased to lend my support to the Urban Parkland Heritage Act. I trust that the recommendations I have put forth today will be given careful consider-

ation by the Subcommittee. I would like to see an extension of the life of operation and maintenance funds beyond four years, as this would encourage more localities to build parks; and the strengthening of the Act to simplify the acquisition and clearing of developed land, which is presently discouraged under Section 704(c). This would be a real contribution to poorer urban sectors which are too densely populated to have undeveloped land. I would also like to suggest antidiscrimination language.

As Halloway Sells, director of settlement houses in Cincinnati keenly observed: "Finding open space is a matter of how badly you want it. When a city wants to put an expressway through, there's no problem. They create the space by eminent domain. But parks? Well, now, that's something else again." Perhaps the funds made available through the Urban Parkland Heritage Act will provide the needed impetus for cities to reassess their priorities and seek out opportunities to establish and improve city parks for all their residents.

Senator WILLIAMS. Mr. Tersh Boasberg. You are the anchor of the anchor session.

STATEMENT OF TERSH BOASBERG, ATTORNEY AT LAW, WASHINGTON, D.C., ON BEHALF OF HISTORIC PRESERVATION FOUNDATIONS IN GALVESTON, TEX., NORTH ADAMS, MASS., AND NEW YORK CITY

Mr. BOASBERG. Thank you, Senator. I realize I stand between you and certain other arrangements. There is no sense in reading my testimony, Senator, as it already has been submitted to you.

As the only person testifying in behalf of historic preservation, which your bill includes in addition to all of the open space provisions, I want to stress how terribly important the bill is to those of us interested in historic preservation. The open space land program is the major source of Federal financial support for historic preservation.

I might say historic preservation has sometimes had an "old lady in tennis shoes" image. I think that is changing now. The movement currently deals more with preserving whole areas of downtown, inner city areas, which are also historic areas. We have moved away from the house museum to wholesale development of the historic areas remaining in our cities, all too few of which are left.

I represent three clients, Galveston, Tex., North Adams, Mass., and the South Street Seaport of New York City. These are all private, non-profit, federally tax-exempt corporations trying to redo parts of the city—in the case of North Adams, an historic mill complex; in the case of Galveston, a magnificent 19th century commercial area near the waterfront; and in New York City, the area known as the Fulton Street market including several clipper ships.

The title to the property is held by the city, and the nonprofit group acts as the sponsor, manages the project, and tries to raise program funds.

I think there is a tremendous change in the awareness of citizens and the awareness of cities to preserve some of these areas not as museums but as 20th century modern places, with housing, stores, restaurants, to really rejuvenate the life of these areas.

Let me just point out one or two things about the bill which we would very much like to have the committee consider.

One is, as one of the gentlemen before me said, the use of the money not just for maintenance but also for some kind of planning and development and for program people so we could hire architects, lawyers,

and executive directors to get the projects organized, planned and moving, as well as purchasing the building, because without the people to put the project into shape it is difficult to do much preservation.

Second, I think that what has been quite helpful in the historic preservation field is to use some of the money as seed money for a revolving fund. We have found this to be very important. You have a revolving fund of so many dollars. You take that, buy a house, fix it up, sell it for a profit, and the profit and sales price comes back in the revolving fund to be used again.

You can use the money in the revolving fund for loans to low income people. They can fix up their own home, and make a profit on it if they decide to sell. If they want to stay in the area they can convert a basement or an attic to a rental unit. And it is a tremendous way of improving an area with very little money. The money turns over and over and over again in this kind of revolving fund.

And lastly I would like to say that I would hope that nonprofit, tax-exempt corporations could be included as part of your citizens' effort as project sponsors or perhaps they could be delegate agencies. The title to the land, the title to the district or buildings, would still be in the city, but the nonprofit citizen corporations could be the active managers or operators.

It is set forth in more detail in my written testimony. I want to thank you for considering historic preservation, and I appreciate it.

[The prepared statement of Mr. Boasberg follows:]

STATEMENT OF TERSH BOASBERG, ATTORNEY, WASHINGTON, D.C.

My name is Tersh Boasberg, and I am a partner of the law firm of Boasberg, Hewes, Klores & Kass, 1225 19th Street, N.W., Washington, D.C. 20036. We represent three non-profit, tax-exempt, private corporations which are working in the field of historic preservation. These groups are:

(1) The Hoosuck Community Resources Corporation which is restoring 19th Century New England textile mills in North Adams, Massachusetts for adaptive use as locations for small businesses and a performing arts complex;

(2) The Galveston Historic Foundation of Galveston, Texas, which is restoring a six-block area in downtown Galveston on the "Strand" for use as housing, restaurants and stores; and,

(3) The South Street Seaport of New York City, which is restoring both land (for use as museum facilities, housing and commercial space) and waterfront piers which will berth 19th Century ships and also serve as attractive places for the performing arts and recreational activities.

All of these groups face similar problems in their efforts to save historic and important structures and sites and turn them into adaptive, usable projects of the 20th Century. There is precious little public funding available for them. The Administration's current freeze on HUD's Open Space Program has tied up the one substantial source of Federal funds for historic preservation. In addition, preservation groups cannot expect to do well if they are forced to compete for limited local special revenue sharing funds, even if such funding should be passed by the Congress.¹

Over 50 percent of the 12,000 buildings listed in the Historic American Buildings Survey since 1933 now have been destroyed. It is, therefore, of great significance to the whole historic preservation movement that this Committee has proposed S. 12 to help breach the gap between public funding and the great unmet need to preserve our historic and architectural heritage.

In order for historic preservation to succeed, there are at least three prerequisites which should be satisfied: first, we need public funding; second, we need to devise a mechanism by which the historic buildings to be preserved can become economically viable structures in the 20th Century; and third, we must

¹ See Costonls, "The Chicago Plan", 85 *Harr. L. Rev.* 574, 582 (1972).

engender community participation so that the average citizen is educated and aware of the value of preserving a part of the past for the benefit of the future.

I. Funds.—Funds are desperately needed to purchase, renovate and restore buildings and historic sites. Often, however, the first need for money occurs in the planning and development stage of projects. The three groups which I represent all had an overwhelming need for flexible planning and development funds. Without such money, the projects could not be delineated; expert legal, financial and architectural help could not be secured; staff could not be retained; the community could not be alerted to the dangers of inactivity or destruction; and, a total workable program for the project could not be put together. I would hope that this Committee would expand as allowable costs which could be incurred, expenses for project planning and development.

Another financial device which has proved especially useful to historic preservation groups is the revolving fund. Such a fund is used to buy buildings (especially residences), restore them, and then resell them at a profit, the proceeds going back into the revolving fund. A revolving fund can also be a source of low-interest loans to individuals who can restore their own homes, or, for example, convert a basement into a private apartment to gain additional income. Imaginative use of revolving funds has been especially important in restoring elegant homes in Savannah, Georgia as well as inner city residences in Pittsburgh, Pennsylvania. It would be most helpful if the Committee could consider the use of its grant and loan money as seed funds to launch similar kinds of local revolving funds. Such an arrangement would give great leverage to the Federal funds granted or loaned by the proposed corporation.

I am glad to see that this Committee has lowered the required non-Federal match needed for grants. I would hope that the Committee would express its intent that this matching share could be made up of other than cash contributions such as "in-kind" (land, buildings and materials) as well as donated services. This would greatly help our hard-pressed local communities.

II. Economic Development.—Not only is it important to save architecturally significant buildings and historic sites for posterity, it is also vital that these projects have an economic viability of their own, if at all possible. This is why "historic preservation for adaptive use" has become a by-line for many local groups. Each of the three groups which we represent is endeavoring to convert historically important buildings in its local community to modern adaptive use. Thus, in North Adams, the restored mills, in addition to housing facilities for the performing arts, will also make available lease space to commercial artisans and small businesses who can complement the effect of the overall project. In both Galveston and New York, the interiors of old, unused buildings are being converted into modern housing, restaurants and stores, the income from which will sustain the project and further its ability to undertake additional restoration work and conduct nonprofitable public-interest educational programs. Current interpretations of the HUD Open Space Program tend to limit historic preservation projects solely to public ownership for purposes such as museums or other traditional uses. This Committee should encourage restoration for adaptive use and embrace the concept of commercial viability while title to the facility remains in public or non-profit ownership.

III. Community Participation.—We are pleased to see that citizen participation is noted in Section 705(a) of the proposed Bill. It is critical that historic preservation not become a concern of only our wealthy citizens, but rather gains support of a wide-ranging population. This is especially true for those projects located in the older (usually the historic) sections of many urban areas which are likely to have a preponderance of disadvantaged and minority residents. In this connection, the Bill does not include private, non-profit, tax-exempt corporations as eligible grantees, nor as delegate agencies of public bodies who could administer and manage historic preservation projects. Often, such citizen efforts are instrumental in securing wide-spread citizen participation and in gaining popular acceptance for local projects. Furthermore, non-profit agencies often are the first interested groups to focus on particular buildings and sites. For example, I have found with each of our three clients that it was the non-profit organization, rather than the municipal agency, which acted as the catalyst for historic preservation and project development. I would hope the Committee would broaden its Bill to include non-profit, tax-exempt organizations as grantees, sponsors and delegate agencies.

I am grateful to the Committee for giving me this opportunity to appear before it. S. 12 is vitally needed and will go a long way toward encouraging our

citizens to preserve, restore and revitalize our historic and architecturally important sites for the future benefit of all Americans.

Senator WILLIAMS. What is the situation now with Federal support for historic preservation?

Mr. BOASBERG. Well, there is no pure Federal support for historic preservation other than what was in the open space program.

Senator WILLIAMS. Doesn't the endowment—

Mr. BOASBERG. The endowment has small project grants. They don't use their money for capital acquisition—for bricks and mortar really. It is for program support. Their average grant has been running \$20,000, which is, you know, just nothing in terms of putting together a large project.

Now, in North Adams we have put together 12 different Federal, State, and local grants to have a year's programming where we could actually buy the mills and reconvert them. We have used a grant from the National Endowment for the Arts for that. We have used some 701 HUD planning money. We have used some State of Massachusetts' tourism money. We have used \$1,000 from the National Trust for Historic Preservation.

We have just really put bits and pieces together to get what we now have, which is a \$400,000 grant from the open space program. We just kind of made it under the wire before the closing January 5.

The national endowment really talks about programs in support of the arts rather than the actual purchase of and restoration of buildings. They just don't have the money for that.

But I think that the use of nonprofits—we have found in a number of the smaller towns that the city is just deluged with requests for terribly needy things, you know, street repairs, police, fire. And there is just no way they can talk about supporting historic preservation even if it is couched in terms of economic development and community development.

So the nonprofit has to do their job. We have got to get the citizens together. We have to get contributions from industry and from private people. And it is a wonderful vehicle for mobilizing the kind of resources which I think are available in many communities.

We just have tremendous support from local people. It is wonderful to see what they can do. And I would just hope there would be some way of channeling that.

Senator WILLIAMS. You have given us a great deal of creative suggestions for some really basic expansion of our effort here. Right?

Mr. BOASBERG. I would be glad to work with you. I have talked with some of your staff people on it. And I don't know how much historic preservation is kind of a "tag-along," you know, on the open space bill or how much of it is a separate thing, but there is a tremendous movement under foot which is aided by the Bicentennial.

You may have been to Ghirardelli Square in San Francisco.

Senator WILLIAMS. Yes, I was just thinking about that before you mentioned it.

Mr. BOASBERG. This is the kind of project that is fantastic. You know how lovely that is. That is a private effort. It would not come under this bill. But that could be a nonprofit corporation. The title to Ghirardelli Square could have been in the city and operations could have been delegated to a nonprofit, which, in turn, leased to all the

same stores and same restaurants, and instead of a profit (I don't mind the profit, and I understand that) but I think we need to broaden the area to encourage citizens so that the historic buildings and areas are used not as museums but as modern, 20th century facilities.

Have you been to San Antonio, Senator? or Savannah? Annapolis? Providence? Lots of these have been more than homes and historic house areas.

But now, you're beginning to see the expansion and active use of historic areas. It's so much better than ripping the darned places down and putting up a high-rise for nothing, you know. The whole heritage is destroyed.

Senator WILLIAMS. Excellent contribution.

Mr. BOASBERG. I would love to work with you. Anything we can do.

Senator WILLIAMS. We will avail ourselves of that.

Mr. BOASBERG. We appreciate your leadership.

Senator WILLIAMS. Thank you very much.

This concludes, for this time at least, the hearings on the 1973 housing and urban development legislation. We are going to keep the record open for 10 days.

Therefore, we now recess the subcommittee to the call of Senator Sparkman.

[Whereupon, at 12:47 p.m., the subcommittee recessed subject to the call of the chairman.]

[The following statements are relevant to the subjects discussed at the hearing today:]

STATEMENT OF E. CLARKE ROSS, FEDERAL PROGRAMS CONSULTANT, UNITED CEREBRAL PALSY ASSOCIATIONS, INC.

Introduction

United Cerebral Palsy Associations, Inc., is a voluntary agency supported by the public for the two-fold purpose of research into the causes and prevention of cerebral palsy and of providing community services for the 750,000 American children and adults with cerebral palsy. Although some of our over 300 affiliates have been in existence long before the national organization, UCPA, Inc. was founded in 1949.

Many of our earlier consumers are now at the age where they are requesting to live away from their parents. They want to be independent and self-sufficient but they have no alternative place to choose. For this reason, UCPA, Inc. is intensifying its efforts in residential services to an unprecedented degree.

UCPA, Inc. warmly endorses Senator Robert Dole's housing proposal for the handicapped, S. 1579. We are proud that we played a large role in the drafting of the bill's content. We think S. 1579 is a beginning to a very neglected area: residential alternatives to institutional care.

The young adult with cerebral palsy

American society endorses the concept that separate living arrangements enhance independence and self-sufficiency in young adults. However, society has not accepted this attitude towards the handicapped. The handicapped adult, and especially the severely handicapped adult, has been cast into the roll of a perpetual child, dependent upon either parent or state, where all important decisions are made for him, not by him.

United Cerebral Palsy recognizes the need for the development of a diverse program that will provide opportunities for handicapped adults to engage in *decision-making* for themselves, especially in the area of residential placement.

For far too long, decisions about living arrangements have been made by parents, governmental, and/or social service agencies usually without the active participation of the handicapped person himself. This limitation of choice as to where, when, and how a handicapped person may choose to live circumscribes his growth experience, his vocational opportunities, and chances to establish his own life style. A destructive cycle is often established resulting in *isolation* of

the handicapped from society. This isolation in turn causes society to fail to provide adequate opportunities and adaptations to deal with a sizable segment of its population.

UCPA, Inc. believes that S. 1579 will help break down this isolation and foster greater independence and self-sufficiency among handicapped adults.

The pressing need for alternative residential services

Handicapped citizens are faced with a crisis in residential care choices today. This point is vividly demonstrated by the study *Residential Needs of Severely Physically Handicapped Non-Retarded Children and Young Adults in New York State* prepared by the Institute of Rehabilitation Medicine of the New York University Medical Center.

The N.Y.U. study discovered that of those severely physically handicapped adults living at home with their families, 79.7% required alternative residential facilities. The breakdown included :

- 1) 39% in families who were physically unable to continue the demands made upon them to provide adequate care.
- 2) 16.9% in families who had never been able to provide needed services.
- 3) 10.8% in families experiencing problems of aged parents or spouse.
- 4) 4.8% in families experiencing problems of ill and/or infirmed parents or spouse.
- 5) 4.1% in families experiencing problems of aged and/or ill and/or infirmed parents or spouse.
- 6) 4.1% in families whose parents or spouse had recently become deceased.

Of even more dramatic importance, the N.Y.U. study discovered that of those severely physically handicapped adults currently residing in facilities, 100% needed a residential change :

- 1) 54% needed changes because they were in facilities (nursing homes or infirmaries) where most of the others in the facilities were aged.
- 2) 40% were receiving inadequate rehabilitation and/or recreation services and the facility lacked a home-like atmosphere.
- 3) 6% were young adults who had outgrown the facility for children or were residing in facilities that were closing or were being removed from the facility because of unmanageable costs or were unable to adjust to institutional living.

The N.Y.U. study demonstrated, without a doubt, that almost all severely physically handicapped adults in New York State require alternative residential services than the ones they are presently receiving. It is probably safe to assume that the case is similar throughout the country. UCPA, Inc. believes that S. 1579 will assist in the development of desperately needed residential alternatives.

The Problems of Voluntary Agencies

A review of private voluntary agency efforts in the past to establish and maintain residential facilities reveals that the financial burden is too great for most single voluntary groups to undertake. The reasons :

- 1) Lack of capital outlay for building construction.
- 2) Lack of a permanent and stable source of income to pay for building maintenance, staff salaries, and services.
- 3) Inability of a sufficient number of parents or disabled persons to pay the monthly charge required to operate a facility.
- 4) Lack of government subsidy to significantly assist in the monthly charges except for those on public assistance.
- 5) Lack of staff support to develop an on-going residential placement and referral system.
- 6) Lack of funds for architectural adaptations to existing residential facilities to accommodate the severely physically involved handicapped individual.

A number of resources are presently available which can potentially, meet some of these needs. However, most of these needs remain unmet :

1) If the Hill-Burton Hospital and Medical Facilities Construction Act is retained and if it is encouraged by Congress, residential capital outlays could be made. Again, if the freeze on the Department of Housing and Urban Development's 236, 221(d)(3), 235 and 231 Programs were lifted and if these programs were encouraged by the Congress, construction costs could be obtained. However, with the present Administration's attempts to terminate these programs, all potential but untapped sources for capital outlay will go out the window.

2) The HUD Low Rent Public Housing Program, which is also being slowly eliminated by the Administration, can support building maintenance. However, staff salaries and support services cannot be supported. It also is not desirable to

have all handicapped persons residing in public housing. S. 1579 would provide this type of needed support.

3) & 4) The new Supplemental Security Income Program (Title XVI of the Social Security Act), effective January 1974, will provide a \$140 monthly income support to disabled adults. Part of this \$140 could be used to pay for monthly charges required to operate a facility. But a large portion of this support remains unobtainable.

5) An optional social service under Titles I, IV, X, and XIV is residential placement and referral. This is not occurring for severely handicapped adults at all and under the May 1st regulations, will be further curtailed. S. 1579 would provide such support.

6) There exists no federal financial resource for architectural adaptations of existing residential facilities. Section 7 of S. 1579 would require all future HUD facilities to plan such adaptability.

S. 1579 and Its Relationship to Deinstitutionalization

The Department of Health, Education, and Welfare's Division on Developmental Disabilities is presently carrying out the President's declared commitment of reducing the population of State institutions for the developmentally disabled. However, this program is carried out under the Projects for National Significance Section of the Developmental Disabilities Facilities and Construction Act (PL 91-517) and is pitifully small. Furthermore, the Developmental Disabilities Act was never intended to be a primary provider of service; rather, it was intended to be a planning, accessing, coordinating Act to put resources in place. Unfortunately, regarding residential services for the severely physically handicapped, there are few resources to put into place.

Many states are now undergoing limited initiatives at institutional reform and deinstitutionalization. Such efforts are creating small residential settings but primarily for the mentally retarded citizen. The primary concern of these states is for ambulatory mentally retarded persons. The non-ambulatory, severely physically involved individual is usually last in priority in these alternative residential initiatives.

One of the most pressing needs today is for attention to the residential needs of the severely physically handicapped. S. 1579 attempts to meet this challenge.

Residential Settings for the Severely Handicapped—How Much Do We Know?

S. 1579 is desperately needed because we really know very little about what residential alternatives can be developed. There exists practically no data on this subject. There are few experimental models in the country today serving the severely physically handicapped.

UCPA, Inc.'s Professional Services Program Department is presently conducting a nationwide survey to discover where these few models do exist, how they operate, and what successes they are having. Through public donations, several UCPA affiliates are initiating residential services for severely handicapped persons. In the next several years we will learn a great deal but the population we are learning about will remain unserved in the area of residential placement.

S. 1579 must be enacted immediately, not only to provide residential services, but to allow us to demonstrate the feasibility of an enlarged system of various methods of providing residential care.

Cost factors in providing residential services to severely physically handicapped persons

S. 1579 is needed so that proper cost analysis may be undertaken in the area of residential services to severely physically handicapped persons. Our statement will cite three examples of cost support of presently operating residential facilities for severely physically handicapped persons. Cost of care varies between \$6.66 per day to \$24.00 per day per individual. These figures do not really equate the cost of care to the quality of care. It is assumed that the cost range varies considerably in proportion to the services available.

1) Echoing Hills, Inc.

Echoing Hills, Inc. is a residential center for severely involved cerebral palsied adults in Warsaw, Ohio. The center was open in early 1973 and presently supports 20 individuals including two married couples.

The daily cost of operation per person for residential services, food, salaries, insurance, utilities, and travel is \$12.88. When the yearly payment on the capital investment is added to the operating cost and broken down per person, the total daily cost per person amounts to \$16.58.

2) *N.Y.U. study*

The New York University Study on Residential Needs of Severely Physically Handicapped Persons, indicated that the largest number of individuals fell within the \$201 to \$300 per month cost of support range. About one-third of the costs ran between \$301 to \$501 per month. This range, on a daily basis per individual, amounted to between \$6.66 and \$16.66.

3) *Spastic Children's Foundation*

The Spastic Children's Foundation of Los Angeles, California has long been involved in providing residential care to severely physically handicapped persons.

The Foundation's major and oldest residential center supports 54 severely handicapped adults. The cost per person per day, including personal assistance, basic living support, recreation, and small activity program involvement is \$24.00.

The Foundation has recently initiated two other types of residential settings. One residential setting supports 20 severely handicapped adults in five apartments in a single apartment building. In the sixth apartment lives the housemother or housefather for the 20 severely handicapped persons. A full-time day consultant, living away from the apartment building, is employed. Residents take part in the larger residential center's activity and recreational programs. Cost per day per individual, including staff support, for these 20 persons is \$10.

The Foundation also supports nine other severely physically handicapped adults who are dispersed in apartments throughout the community. Four severely handicapped women share a three bedroom apartment with a housemother while two other severely handicapped women share a two bedroom apartment with a housemother. Three other severely handicapped women live entirely independent with an occasional visiting day consultant. The cost per day per individual is also \$10.00.

Closing

The numbers of severely physically handicapped adults in the country is comparatively small. But their needs, especially their residential needs, are severe. We applaud the initiative and effort of Senator Robert Dole for his introduction of S. 1579. We appeal to both this Committee and to Senator Dole that extensive congressional hearings be undertaken during the 93rd Congress so that knowledgeable experts and severely handicapped consumers can first-handedly affirm the residential predicament facing the severely physically handicapped citizens of our nation.

PLANETARIUM NEIGHBORHOOD COUNCIL,
New York, N.Y., July 19, 1973.

Senator JOHN SPARKMAN,

Chairman, Subcommittee on Housing, U.S. Senate Subcommittee on Banking, Housing, and Urban Affairs, Washington, D.C.

DEAR SENATOR SPARKMAN: The Planetarium Neighborhood Council has for many years been actively working for the improvement of social and housing conditions of single room occupants in our neighborhood. Our efforts have been seriously impeded by the lack of coverage for this population under federal housing programs. We are therefore writing to urge new legislation this year to cover the special needs of single non-elderly persons.

Our concern about housing for single room occupants dates back to the inception of the Planetarium Neighborhood Council, originally organized in 1961, when the area was designated for urban renewal. The unfortunate results of elimination of SRO's and rooming houses in the neighboring West Side Urban Renewal Area are already apparent in the increased density and concentration of single room occupants within the Planetarium area. From the beginning the policy of our Council in planning for urban renewal was to provide for the SRO tenants as a permanent part of the community and to develop the kind of social service programs and improved housing, to enable them to live better lives in the midst of a community which is predominantly middle income families. When urban renewal designation for our area was cancelled due to lack of funds, the Planetarium Council decided to continue its efforts toward neighborhood improvement in general and its commitment to the SRO population in particular.

In 1968 a member of our organization, Herbert Levy, wrote an article proposing a new approach to single room occupancy housing, which appeared in

the *Journal of Housing*, and was later inserted in the record of the 1969 hearings of the Subcommittee on Housing in the House of Representatives. With the help and support of our New York Congressional delegation, we worked actively in an effort to get the needed federal housing legislation, and after the passage of the provisions for congregate housing in the Housing and Urban Development Act of 1970, took a leadership role in trying to get regulations for congregate housing that would meet the needs of our SRO neighbors. In June 1971 at our invitation a group of HUD officials visited New York. Under the leadership of Jean Miles, one of our Board members, a series of meetings and tours of SRO's were arranged in order to interpret to HUD the dilemmas that we face in providing adequate housing for single room occupants. A local architect, Edward Shiffer, prepared a model plan for congregate housing as we envisioned it. At the suggestion of HUD we submitted a demonstration proposal for rehabilitation of an SRO through 236 financing. The proposal was rejected on the grounds that legislation providing for congregate housing would not permit the use of federal funds for SRO housing. Also at the suggestion of HUD, we have requested that the Housing Authority use the Section 23 Leasing Program for SRO housing, but have likewise been turned down on this on the grounds that the legislation and the required standards would not permit it. Clearly, new legislation is necessary.

Through the initiative of the Planetarium Neighborhood Council the New York City SRO Coalition was organized in 1972 representing many community groups. After many years of petitioning the Mayor of the City of New York and the Borough President of Manhattan to set up a Task Force to deal substantively with these issues, Mayor Lindsay responded to this renewed request on the part of the SRO Coalition and in February 1973 established an SRO Task Force of City Agencies, to work with the community on improving the social and housing conditions for SRO tenants. An essential part of the overall program is the development of more adequate housing suited to the special needs of this population. We have urged the City to use its Municipal Loan Program to rehabilitate an existing SRO as congregate housing on an experimental basis. We are establishing a nonprofit community corporation which will assume responsibility for the operation of the project. It is our hope that this pioneering effort will be of value to the city and to the country in evolving a new type of housing.

However, it is urgent that federal funds be made available for expanding such efforts. We have received many inquiries from other cities regarding our efforts to develop SRO housing. We are therefore acutely aware of the fact that this problem is not unique to our community or to our city, but is a national problem. We urge that the Senate Subcommittee on Housing give this most serious consideration for legislation this year.

We attempted to get on the agenda to testify at the current hearings of your Committee but were told it was not possible because of the crowded agenda. We therefore request that this letter be included in the record of the hearings. Enclosed is a package of back-up material to further clarify the need for legislative action.

Sincerely yours,

JOHN KOWAL,
Chairman.

PLANETARIUM NEIGHBORHOOD COUNCIL,
New York, N.Y., October 7, 1971.

Mr. HAROLD B. FINGER

Assistant Secretary for Research and Technology, Housing and Urban Development, Washington, D.C.

DEAR MR. FINGER: We are submitting for your consideration a concept for a demonstration congregate housing project for single room occupants on the West Side of Manhattan. This is the outgrowth of correspondence, discussions and meetings with HUD officials.

Shortly after the Housing and Development Act of 1970 was passed, our organization, the Planetarium Council, wrote to Assistant Secretary Gullledge expressing our hope for maximum flexibility in the regulations governing the new provisions for congregate housing and inviting HUD to visit our community to understand the problem of the Single Room Occupancy buildings (SRO's) and the needs of the SRO tenants. On June 11, 1971, we were privileged to have such a site visit and to show representatives of HUD the actual

housing conditions under which many poor, single people must live in New York City.

Mr. Everett Rothschild of the Management Division, and Mr. Nicholes Artonomoff of Housing Production, area and regional HUD personnel, HDA staff and Congressman William Ryan, were present. The possibility of developing a congregate housing project for single low income persons currently residing in SRO's, was discussed and it was suggested that we submit a demonstration proposal. Subsequently we were informed by Congressman Ryan that Assistant Secretary Watson was in accord with this recommendation. The reason given was that most SRO tenants would not qualify under the three eligibility criteria for congregate housing set forth in the Act—elderly, handicapped or displaced.

Accordingly, we have prepared a preliminary proposal for demonstration SRO housing which would be planned for a typical cross-section of SRO tenants from the area. Although some might be elderly or disabled, tenant selection would be based on the need and desire for this type of housing. For your information, we are enclosing a preliminary proposal which elaborates on the concept outlined here.

We propose to demonstrate not only the need for a special type of housing for single persons of low or limited income, but also that standards for congregate housing should be flexible enough to permit development of the kind of housing needed by this special, but increasingly large nationwide group. The plan would demonstrate the potential of congregate living as a new approach to housing single people, and the feasibility of using existing SRO's for this purpose by applying moderate rehabilitation, conjunctive social services, special management and maintenance provisions.

The demonstration would be sponsored by the Planetarium Neighbor Council, a nonprofit group, broadly representative of the West Side community, in conjunction with the Office of Problem Housing of the Housing and Development Administration. The Planetarium Council has had many years of experience with SRO's and their tenants. This is the community's largest and most obvious problem, which has been seriously aggravated by the displacement of this population from neighboring urban renewal areas. Rather than push this population still further, we are attempting to deal with their plight, improve their living, health and social conditions, and help them become satisfactorily integrated into the community.

The Planetarium Council would acquire an existing SRO building suitable for moderate rehabilitation, operate and evaluate the project. The Office of Problem Housing of HDA would provide technical assistance in planning and implementation. The plan would entail the "upgrading" of SRO's into congregate housing, retaining to a large extent the existing lay-out, providing single rooms, shared bathrooms, communal lounges and kitchens, and space for recreation and social and management services. Although predominantly single rooms, some efficiency or two-room units would be included to allow a range of choices and therefore, a varied population within the building. Two SRO's have been selected as a potential site, as described in attached preliminary proposal.

Management and social services will be geared to the capacities, needs and life-style of single room occupants, many of whom are isolated and marginally functioning persons, who do not require full care but are not capable of desirous of full housekeeping responsibilities, or the isolation of self-contained units. Tenant assistance, tenant education and tenant organization will be aimed at: maximizing social interaction and the development of social units and tenant leadership; encouraging self-help and mutual assistance; minimizing sustained housekeeping responsibilities, but encouraging tenant participation in and responsibility for building study of all aspects of the project would be made. Information and reactions would be obtained from tenants, community representatives, city officials and project staff regarding use of facilities, social impact on tenants, effectiveness of management and services, and cost. Particular focus would be on tenant reactions and attitudes to develop a livability experience with congregate housing.

Careful study of all aspects of the project would be made. Information and reactions would be obtained from tenants, community representatives, city officials and project staff regarding use of facilities, social impact on tenants, effectiveness of management and services, and cost. Particular focus would be on tenant reactions and attitudes to develop a livability experience with congregate housing.

The assistance of an outside agent, such as the School of Architecture and Urban Planning of a local university, would be enlisted as a participatory evaluator. Some of the questions for evaluation would be:

A. Physical and Economic Feasibility and Housing Design

1. Can the existing layout of SRO's be utilized to provide "decent" and "suitable" housing appropriate to the needs of tenants?

2. Can moderate rehabilitation produce an economically viable project whereby construction costs would be sufficiently reduced to absorb increased operating costs?

3. Are shared facilities (bathrooms and kitchens) economically and socially viable?

4. How do tenants use communal space and what problems emerge in lounges, bathrooms and kitchens?

5. Does the availability of communal space compensate effectively for the limited room size?

B. Management and Social Services

1. What problems emerge on rent collection and security control?

2. To what degree can tenants participate in maintenance of communal space as well as their own rooms and what problems emerge with respect to cleaning and repair?

3. To what extent can social services foster self-sufficiency, cooperation and mutual assistance in the areas of housekeeping responsibilities as well as social problems?

4. What is the impact of services on health and social behavior?

C. Nature of the Population and Suitability of Congregate Housing for Individual Tenants

1. What advantages and difficulties emerge through a mixed population?

2. Can distinctions be made in tenant selection for congregate units or self-contained units?

3. What are the eating and housekeeping patterns in the different types of units?

4. Do congregate units or suite-type arrangements foster social interaction of people (otherwise isolated) as social units?

5. What patterns of compatibility and tenant leadership emerge?

6. What possibilities exist for tenant control and employment?

7. What problems emerge in occupancy (turnover or tenancy and movement within the building)?

Based on the findings, the final report will consider the implications for housing design and physical standards, management and service requirements, and tenant selection criteria for congregate housing for single room occupants.

It is anticipated that this will be a three to four year project depending on the length of time required for planning and development. The evaluation period would extend two years after the occupancy date. Building staff would include: resident/manager, custodial and cleaning staff, a social service worker. Other project staff required would be a Project Director, Evaluator, Secretary, and possibly supplementary planning staff.

Although a possible site has been considered as the basis for a preliminary proposal, it is impossible to specify project cost since this will depend on the final site selected—cost of acquisition, design feasibility, amount of rehabilitation required, number of units, personnel requirements. One of the central factors this demonstration would test is economic feasibility. The attempt will be to develop a project which would be economically feasible from the standpoint of acquisition, development and operational costs within the rent structure \$125/mo., which would cover shelter and services. This would be within the rent allowable by the Department of Social Services and the Federal Rent Supplement Program.

The Planetarium Neighborhood Council is dependent on the cooperation of volunteers. A local architect who has experience with SRO's, has consented to work up costs for us and our lawyer has done some preliminary exploration with the owner of the potential site. We are reluctant to proceed, however, without some comment and advice from your office regarding:

1. the interest in the proposed project as a demonstration;

2. the possibility of funding; and

3. the format and content required for a final proposal.

We are under the impression that this project could be jointly financed, using 236 funds for the development cost and research funding for evaluation, administration and supplemental staff required for a demonstration. We will be glad to make whatever changes are deemed necessary to get the project underway. However we hope to get some response as quickly as possible. The owner of the proposed site has indicated his willingness to sell, but in order to hold the site and submit a realistic plan, option money will be needed very shortly.

We are grateful for the interest of HUD in the problem of SRO housing. Congressman Ryan has kindly offered the services of his legislative assistant, Howard Eglit, as liaison between our community and the various housing offices. Listed below are the names of people to contact from the sponsoring group, and the staff of the HDA who have primary responsibility for housing of SRO tenants and who have worked closely with us in the preparation of this plan.

Sincerely yours,

JOHN KOWAL, *Chairman.*

COMMENTS ON DRAFT REGULATIONS FOR CONGREGATE HOUSING DOCUMENT 7410
SUBMITTED BY PLANETARIUM NEIGHBORHOOD COUNCIL TO HUD

1. These regulations apply only to Section 207 (public housing). Community interest in congregate housing is primarily in Section 114 (nonprofit sponsorship and rent supplements).

2. The regulations for "Minimum Property Standards for the Elderly with Special Consideration for the Handicapped" (HUD PG-46) are inappropriate. Congregate housing is conceived as a new type of housing. The design standards of HUD PG-46 (e.g., requirements for room size, cooking and eating facilities, bathrooms, width of corridors, foyers) are too stringent to be applicable to congregate housing for the following reasons:

a. A central concept of congregate housing is the use of common space as an extension of individual units. Requirements for individual units can be lessened when bathrooms, kitchens, living rooms and hallways are shared, as in a suite.

b. For the SRO population high density projects are considered undesirable. For small projects MPS requirements are prohibitive economically particularly for rehabilitation.

3. The central dining requirements are too restrictive.

a. For some tenancy central dining is inappropriate for social reasons.

b. For small projects it is unfeasible in both construction and operating costs.

c. Costs of central dining cannot be offset by omitting kitchens in the units since congregate housing should provide some cooking facilities for tenant use.

4. The limitation on shared bathrooms to single displaced persons as distinct from elderly and handicapped is ambiguous. Some single displaced persons happen to be elderly or handicapped.

5. Operating costs should include tenant services if an in-building service program is part of a project plan. If central food service is required, it must be allowable as an operating expense.

RECOMMENDATION

It is the recommendation of the Planetarium Neighborhood Council that congregate housing should be viewed as a new concept of housing, and should not be tied to standards which have been developed for traditional, although special purpose housing. Since this is a new development in housing, we urge that standards should be extremely flexible or postponed for a period of time in order to allow for experimentation and livability testing of congregate housing as a social as well as physical design.

[From The Journal of Housing, 1968]

NEEDED: A NEW KIND OF SINGLE ROOM OCCUPANCY HOUSING

(By Herbert Levy)

"Single room occupants" (SRO's) have not been recognized as forming a distinct urban class of persons who have unique housing needs. As a consequence, this group of low-income, non-family individuals has been left to find whatever haphazard housing it could, generally makeshift and deteriorating. Such housing, attracting a large share of socially disoriented and criminally inclined persons, tends to have a blighting influence not only on those who live in it, but also on the surrounding neighborhood, repelling the more stable elements in the community and contributing to the neighborhood's deterioration, which, typically leads to an urban renewal project.

Who are these people? They have been described as unattached individuals hidden away in apartment houses converted years ago into furnished-room occupancies—isolated people without families, often without friends, living alone in poverty, in tiny, barren rooms. They are the discharges from state hospitals and prisons, the alcoholics, the drug addicts, the blind, the amputees, the TB patients, the aged. They are the uneducated, the unskilled, the southern Negro migrant, the hard-core welfare recipients. They are the people described by Carroll Novick in *The World of 207, A Report of an In-Building Program Conducted in an SRO* (New York City Housing and Redevelopment Board, February 1966).

Typically these SRO tenants are single men or women characterized, according to Joan H. Shapiro in a 1966 article in *Social Work*, "by marked social and psychological maladaptation and chronic physical disease; they are neither sick or deviant enough to be institutionalized nor well enough to use health, social or welfare services effectively. Many cluster in urban rooming houses . . . where untreated illness, hunger, loneliness, and sporadic violence are in unrelieved concomitance of existence."

Many of this group of persons—lacking the capacity to fulfill the ordinary human obligations of work, marriage, and child-rearing; rejecting any relationship with the larger society in which they find themselves; and rejected, in turn, by it—are subject in varying degree to clinically described personality disorders. Selma Fraiberg, associate professor of child psychoanalysis at the University of Michigan, has called these "the disease of nonattachment." In an article for the December 1967 *Commentary* magazine, she wrote: "The life histories of people with such a disease reveal no single significant human relationship. The narrative of their lives reads like a vagrant journey with chance encounters and transient partnerships. Since no partner is valued, any one partner can be exchanged for any other; in the absence of love, there is no pain in loss. Indeed, the other striking characteristics of such people is their impoverished emotional range. There is no joy, no grief, no guilt, and no remorse." They are found in mental hospitals says Joan Shapiro, and are part of the recirculating prison population, while a "very large number of them have settled inconspicuously in the disordered landscape of a slum, or a carnie show, or underworld enterprises where the absence of human connections can afford vocation and specialization."

WHAT HOUSING?

"SRO housing" is a contraction for single-room occupancy housing. The number of SRO occupancies has never been ascertained with precision but it has been estimated that there are about 98,000 SRO units in New York City, of which some 33,000 are in Manhattan. Functionally, an SRO is an impersonalized magnification of an old-fashioned "Mrs. Murphy's rooming house" for single persons, which was run by a widow or a couple living on the premises who insisted on and maintained their personal standards of decorum and cleanliness for the half dozen or so roomers in their home. By contrast, the number of single-room occupancies in a large SRO today is usually around 100, while the management lives off the premises.

In some instances these buildings were originally respectable middle-class hotels. More usually, the buildings were apartment houses and the change, when it came, consisted in leaving the apartment door permanently open and putting locks on the doors of all the rooms except for the kitchen and bathroom, which were then used in common. The former apartment offered six to eight single-room occupancies renting to single-tenants at from \$10 to \$30 a week per room. It was observed in a 1966 city report that under the new regimen, "the building deteriorates physically, building violations rise, maintenance of elementary housekeeping service becomes difficult, and sanitation leaves much to be desired. Understandably, this kind of building use results in heavy stress on the building's utilities and physical structure, which means more frequent repairs. No doubt tenant apathy and carelessness are matched by the landlord's indifference and the economics of this kind of real estate operation in contributing to the deterioration of the property."

What is wrong with SRO housing may be discussed under two headings: first, its effect on the surrounding community and, second, its effect on the people living there.

In 1958, the New York City Planning Commission issued a report on the West Side urban renewal study in which it noted that "the Upper West Side should be

a thriving and prosperous neighborhood, returning dividends of good living conditions to its residents as well as soundness, stability, and a secure economic base to the City. Instead, it is an area in decline. Blight has set in and its spread is marked by excessive population turnover and increasing deterioration and overcrowding of housing. A by-product is congestion of streets, open space, schools and other public facilities."

The cause of the slum, blighting and deteriorated conditions was the development of SRO housing. "More stable community residents feel threatened by the anti-social behavior of some SRO tenants. With illegal activity in the neighborhood [i.e., breaking and entering, prostitution, drunkenness, violence, drug peddling, panhandling, unpleasant street encounters, and nighttime disturbance of the peace], police and ambulance calls usually increase." The consequence is that the more stable residents of the community tend to withdraw from the vicinity of the SRO's. Should there be a cluster of SRO buildings, the deteriorating effects are multiplied geometrically. The area is then said to be ripe for urban renewal. Indeed, it is unfortunately true that in the last 20 years in New York City, SRO residents have been pushed from one area to another because of urban renewal, taking along all the indices of slum, blight, and neighborhood deterioration. The costs of successive urban renewal projects from Central Harlem and the New York Coliseum through Morningside Gardens, West Park, West Side Urban Renewal Area, and Lincoln Center are measured in hundreds of millions of dollars. Yet after this vast expenditure of public moneys, the problem remains and it has been estimated that public funds spent merely on income maintenance of SRO occupants run as high as 75 million dollars annually.

It can be stated categorically that SRO housing is at best inadequate to meet the special needs and disabilities of the persons found there. In the first place, it was never designed for its present function. It is incompatibly converted, second-class housing. The general level of maintenance is demoralizing.

One may imagine the state of a bathroom used by six or eight persons, none of whom has the responsibility for keeping it clean, while several of them must lack the emotional resources to care. Similarly, food preparation is severely inhibited in a common kitchen where not everyone may cook at once and the unlocked refrigerator door is an open invitation to theft of food unwarily left inside. Most rooms have two-burner stoves, which eases the problem, but food must still be bought very largely on a meal-to-meal basis, a system both onerous and expensive. The result is that, as Joan Shapiro noted, "hunger was pervasive, food preparation tended to be sporadic, with heavy concentration on potatoes, beans and rice; little meat, fish or eggs; and almost no fruits or vegetables."

Because the doors to the rooms were never intended as public hall barriers, they serve that purpose inefficiently and robbery is a constant factor in these buildings. Occupants have been reported to remain ill and unaided in their rooms for days (even in death) because the operational structure does not provide for adequate observation or protection of the occupant. Frequently, occupants who receive welfare checks are robbed by former building occupants or friends of the more lawless persons who inhabit these buildings. Finally, since most of these buildings are converted apartment houses, there is no adequate space available in which to pursue service programs to help the occupants to escape at least a part of the misery of their lives.

SERVICES

Over the last few years, in-building service programs have been evolved to minister to the needs of SRO occupants. These programs are an attempt to provide externally for the lack in SRO occupants of those inner resources that allow average men and women to lead ordinary lives, submitting to the necessities of the work week, housekeeping, bringing up children, and devoting oneself to family and friends. They furnish a focus for lives sunk in apathy and loneliness. The attempt is made to relate the SRO occupant to the program worker and then to the in-building community. In the process of supplying some structure to the lives of SRO occupants, violence and general anti-social behavior tend to decrease. A more positive atmosphere emerges.

The typical program involves one or more social workers who go into an SRO building and create interest among the occupants. Direct service might include public health nursing, group work, casework, and vocational counseling. Team workers might involve community resources for a more efficient flow of services. The team might respond to the fears of the tenants and extreme physical and emotional conditions by taking individuals to various community agencies or by bringing in agency representatives. A team worker could then introduce and

help the occupants to explain their needs. The residents might also be encouraged to meet as a group to discuss plans in which they could join to improve their lot. Leaders are sought out and encouraged to implement various suggested recreational and other programs. A social room may be secured and an escort service organized to help people to get to appointments at hospitals and welfare centers. A dinner might be arranged and cooked on the premises by the building's occupants. In addition, residents are urged to eat adequately and clean up themselves and their rooms. Ultimately a sense of community is engendered among the occupants, creating a feeling of belonging and pride and breaking down, to some extent, that invisible barrier that separates them from the larger society surrounding them.

Both the reported programs of this nature, as well as unreported instances, indicate a large measure of success. But there are several difficulties with this approach. For one thing, the program is utterly dependent on the good will of the individual building manager. If he declines to permit the social workers to be in the building, there is no program. Again, public rooms are essential and in a building designed as an apartment house for family occupancy, public rooms are nonexistent. Although a sympathetic manager may give up a small room for an office, there is no place for a larger number of persons to meet.

Finally, it must be noted that, where a service program has been withdrawn from a building, the preexisting apathy and anarchy have recurred within the year.

WHAT'S THE ANSWER?

The purpose of this report to this point has been to delineate the unrelieved need of SRO occupants, and of the larger urban community surrounding them, for adequate housing to alleviate the miseries in their lives and the blighting influences in the community of existing SRO buildings. What follows is an attempt to spell out the details of optimum SRO housing, including cost estimates. To this end, the model is, somewhat arbitrarily, a building housing 560 persons.

The building as envisioned by William Maxwell Rice, AIA, ASPE, would measure 44 feet by 150 feet. There would be 20 residential floors, each having two wings off a center elevator core, with each wing containing 10 single rooms of approximately 80 square feet apiece and two double rooms of approximately 170 square feet each, adding up to 24 rooms per floor, or 560 residential rooms in all. Each wing would have six waterclosets, two washbasin rooms, two shower rooms, and two tub rooms. The use of epoxy paints with a ceramic-like finish would facilitate cleaning. The main floor, besides lobby and office rooms for staff and occupants, would be mainly devoted to a large social hall, at one end of which would be a steam table which could be closed off from the hall when not in use. It is contemplated that one meal a day, supper, would be served to the dependents of the building. This meal would not be prepared on the premises, obviating the need for a kitchen installation with attendant staff, reducing both the cost and the complexity of the operation. Instead, an arrangement would be made to bring in cooked dinners at a cost of less than one dollar per portion per day.

The committee that initiated this study considered the number of meals, if any, to be served. Although accepting Joan Shapiro's statement that hunger was pervasive, the idea of three meals per day was dropped as requiring the fortitude of an eminent Victorian, the insatiable appetite of growing adolescent, or the indifference of a hospital patient too ill to protest. But one meal a day to allay serious hunger, supply adequate nutrition, and provide a kind of focus for the day's routine, seemed both necessary and desirable. Coffee would be available at any time via the powder method. Similarly, the use of paper plates as necessary would reduce the complexity of the feeding operation and the KP detail. Encouragement could be given to occupants to supply building services on a paying basis to the extent that their personality structures and infirmities allowed.

An integral part of this concept of optimum SRO housing is an in-building service program. . . .

The building described does not include self-contained apartments with private bathroom and kitchen facilities. One reason is economic. The overriding reason is that self-contained units are ultimately unrealistic for this type of SRO occupant because of their particular personality disabilities. The need is not to isolate them further but to find the means of bringing these people out into contact with others. To put such persons to the trouble of crossing a hallway to relieve themselves and to wash is to bring them into contact with others. A private

kitchen is an amusing toy but basically these are persons (like many "middle-class" single people) who do not care to cook for themselves on a continuing basis and do not have the inner discipline to accomplish such a goal. Unlike their counterparts in other economic strata, they lack the funds and the emotional structure to "eat out" on a regular basis. An imaginative staff could help those persons in the building who wanted to do so, to find appropriate self-contained apartments, as well as have on the premises the facilities for "special occasion" cooking if a group of residents were so inclined.

One must conclude that most SRO occupants are not basically family-oriented persons. Their housing, optimally, should be oriented to their particular needs and disabilities. For those who have the emotional capacity to develop sufficient strength to be integrated into the larger, work-a-day society, the housing here described would be a way-station. But the whole purpose of this study has been to make the point that the SRO occupant is a basic component of the urban scene and one who for too long has been regarded by proper folk as if he were invisible or untouchable.

To arrive at a primitive cost analysis, comparison may be made with the building at 830 Amsterdam Avenue, New York City, a low-rent family apartment house owned by the New York City Housing Authority. It is 21 stories high and shelters an estimated 550 persons. The cost of its construction in 1965 was \$3,650,000. Adding an estimated 8½ percent for the increased costs of labor and materials, the construction costs in 1968 would be \$3,960,250. This figure is in line with Mr. Rice's construction estimate of \$3,750,000 for housing a comparable number of low-income, non-family persons. No. 830 Amsterdam Avenue has a monthly rental income (based on 727.5 rooms at \$15.87 per room) of \$11,450.

The rental income on a monthly basis of the optimum SRO is based on weekly rentals of \$10 for 400 single rooms and \$15 for 80 double rooms. On a monthly basis this works out to an estimated \$19,500. (An additional \$6 per week would be added to the rent to cover seven meals, so that the weekly rentals on a modified American plan would be \$16 for a single person or \$27 for a couple.)

The functional basis of public housing financing is that the rental income covers operating expenses, with the government contribution limited to paying up principal and interest on maturing local housing authority bonds over a 30- to 40-year span issued upon project completion to pay the costs of construction. If one applies that principle to an estimate of monthly operating costs for an optimum SRO, one can add to the monthly rental income of 830 Amsterdam Avenue a proportionate monthly share of an in-building services program. Allowing for some overlapping of personnel, estimated income approximately meets projected operating costs. The optimum SRO housing project, as conceived, is economically viable measured against existing subsidized, low rent public housing.

CONCLUSION

That SRO occupants are abandoned to a Victorian squalor is due to the prevalence of the concept, equally Victorian, of the "worthy poor." Perhaps the problem is that SRO occupants cannot be fitted into middle-class patterns and these determine where help is given.

The battle to establish the principle of subsidized low-income family housing was hard fought and long in doubt and, if the idea has been accepted (grudgingly in some quarters), it was solely on the basis that all children deserve a proper physical environment in which to grow up and that elderly parents are entitled to some comfort to recompense their years of toil. It is significant that there is still not an adequate supply of low-rent family housing in the United States.

Similarly, a proposal to provide an extensive in-building service program for SRO tenants with OEO anti-poverty funds probably foundered on the twin reefs of inadequate available grant funds and local anti-poverty administrators' preference for more "worthy" bootstrap programs, such as job training and Head Start.

If "practical" justification is needed for optimum SRO housing, it is surely found in the experience of the last two decades with urban renewal. Hundreds of millions of dollars have been spent acquiring land for urban renewal projects and all too often the unintended result has been to drive SRO occupants from one area to another, to provide each area successively with the indices of slum, blight, and neighborhood deterioration, without alleviating the conditions under which these people have continued to live. (Until the housing Act of 1964, federal relocation standards—however minimal—did not extend to non-family relocatees.) If urban renewal is to fulfill its promise, the plight of the low-income,

non-family SRO occupant must be recognized and resolved—if not for the sake of the SRO occupants themselves, then for the benefit of the larger urban community in which they exist.

The means to effectuate optimum housing for low-income, non-family persons (as has been suggested above) must rest upon a program of construction subsidies. Several existing housing subsidy program suggest themselves as models. These may be divided into two basic groups. There is the local housing authority subsidy program which has the benefit of lower interest costs from tax-exempt securities issued by a local public corporation, so that the subsidy is an annual one to pay off interest and principal on maturing bonds. Then there are the college housing program and the various Federal Housing Administration mortgage guarantee programs, under which the cost of construction are loaned initially as a lump sum, which is paid off by the borrower.

It seems desirable in planning a program for optimum SRO housing to opt away from an impersonal public housing authority and towards the operation of this housing by non-profit sponsoring organizations that will take an active interest in overseeing the in-building service program aspect of the operation. (In this sense, the institutional sponsor would be more than a mere facade behind which a builder and a management corporation operate.) In this fashion, one hopes, the human scale of the operation would be preserved.

The execution of an optimum SRO housing program, as has been delineated here, admittedly, would not be easy. And yet the difficulties the present themselves should not serve as a bar to pursuing it. The rewards of the program in the lives of the individuals who would benefit; the increased viability of the urban community; and, lastly, the saving of urban renewal funds and the more effective use of these funds expended, all advocate the realization of a legislative program to effectuate specialized housing for low-income, non-family individuals—the adults who have survived the psychologically maimed unsimiling childhood of which Professor Fraiberg has written.

Budget for "SRO" in-building services

Project director	\$15, 000
Project administrator assistant.....	7, 500
Social workers (3 at \$9,000)	27, 000
Public health nurse technician.....	8, 500
Building leaders (6 at \$1.75 per hour for 30-hour week)	16, 380
Consulting psychiatrist (3 hours week at \$25 per hour)	3, 900
Secretaries (2 at \$5,000)	10, 000
Bookkeeper-clerk	6, 000
Office expenses	1, 500
Telephone	1, 800
Contingency fund (car fare, program, etc.)	3, 000
Cleaning service	2, 500
Fringe benefits (15 percent of salaries)	15, 000
	<hr/>
	118, 080

This budget was developed in 1966 and revised in 1967 by Edna J. Baer, Carroll Novick, and George Rose for a report to the New York City Housing and Redevelopment Board.

ENFORCEMENT OF NEW YORK CITY HOUSING MAINTENANCE CODE WOULD DISPLACE MANY SINGLE-ROOM TENANTS

Two provisions of the New York City housing maintenance code deal explicitly with single room occupancy units. One provision orders the eventual closing down of all SRO units that were created by partitioning off larger apartments. Occupancy of such units will be illegal after January 14, 1977 unless the law is rescinded or amended. Residential hotels and rooming houses that were originally built for single room occupancy and the kind of optimum SRO units envisioned by Mr. Levy in his article will remain legal under the law. According to an estimate in a November 17 article in *The New York Times*, however, the closing down of partitioned apartments will eventually displace 30,000 to 70,000 people.

Another provision of the code—one that is having a more immediate effect—is the requirement of at least one bathroom for every six tenants. The deadline for

compliance with that provision was January 1, 1968. Since that time, New York City housing inspectors have issued violation reports on 110 buildings where the tenant-bathroom ratio is not up to standard. Some 6000 tenants live in these 110 buildings.

So far, the New York City Housing and Development Administration has not carried through on reinspection and enforcement of the tenant-bathroom ratio requirement, however, and New York City Councilman Theodore Weiss has introduced a bill that would give landlords more time to comply and thus further postpone enforcement of the ratio. The bill has been referred to committee.

Even though the tenant-bathroom ratio has not been enforced yet, many landlords have begun to dispossess tenants in an effort either to meet the tenant-bathroom ratio and bring their properties up to code standard as SRO buildings or to change the nature of their properties from SRO buildings to regular apartment buildings. SRO tenants who are displaced by this process often have great difficulty finding new housing, since there is a shortage of SRO units in New York City. The relocation department and the neighborhood conservation bureau of the Housing and Development Administration are working with these displacees to help them find suitable housing that does meet code standards. SRO tenants displaced by code enforcement and relocated into standard housing are entitled to relocation adjustment payments.

HDA officials often try to find regular apartment units for the displaced SRO tenants but many SRO tenants prefer single room occupancy for a number of reasons, some of which were pointed out in the November 17 *New York Times* article: (1) a tenant can often afford single room occupancy in a neighborhood he likes but would be forced to move to a less desirable neighborhood in order to afford regular apartment occupancy; (2) the system of welfare allotments in New York allows a substantially higher average monthly rental for a furnished room than it does for an unfurnished apartment; (3) race prejudice on the part of landlords and the disinclination of apartment house landlords to accept tenants who are on welfare is an obstacle for many SRO tenants to find decent apartments.

CHICAGO TO UTILIZE OPTIMUM SRO CONCEPT IN RELOCATING HOMELESS MEN

Pictured left is the kind of structure that will be torn down in a part of Chicago's skid row that is located in the Madison-Canal urban renewal area. Officials at the Chicago department of urban renewal estimate that some 2000 homeless men will be displaced by the project. Plans for relocating these men include construction of single-room occupancy buildings geared to their needs—the same kind of "optimum SRO" units envisioned by Mr. Levy.

Interest in how to handle the problem of Chicago's skid row men dates back to a report, *The Homeless Man on Skid Row*, published in 1961 by the Tenants Relocation Bureau of the City of Chicago. Further study on the subject was done at the Chicago campus of the University of Illinois. In addition, the relocation division of the Chicago renewal department has worked closely with agencies in the skid row area to find out the needs of the skid row men.

Although no sites have yet been picked for the optimum SRO relocation buildings, the department is looking to the Department of Housing and Urban Development and the Department of Health, Education, and Welfare for funds to implement a single-room occupancy construction program. The buildings would be operated as public housing. Social service facilities and some food service facilities are likely to be included in Chicago's SRO's.

Pictured below is what will replace the skid row area: a 90-story office building; two office-apartment buildings, one a 70-story structure and one a 24-story structure; and a one-story community center. All will be erected over a plaza covering the entire project area. The developer, chosen by the department on December 5, is the Madison-Canal Development Company, whose partners include the chairman and president of the Holiday Inn motel chain. No federal funds have been involved in the project. The developers are paying \$21,174,537 for the project land, a price that will cover the cost of the project to the city. Cost of construction of the plaza is estimated at \$350,000,000. Acquisition for the project will start shortly after the first of the year. The plaza will be named Place DuSable after Baptiste DuSable, a negro who was the city's first citizen.

THE CASE FOR CONGREGATE HOUSING

(By Carroll Kowal, Assistant Director, Office of Problem Housing, Housing and Development Administration, New York City)

Housing needs of single room occupants have increasingly become a focus of attention. Thousands of unattached persons residing in the furnished rooms of hotels, rooming houses, lodging houses, single room occupancy buildings (SRO's) can no longer be ignored. Mounting community pressure demands new solutions. Congregate housing offers one alternative suitable for a portion of the population.

The problems of single room occupants and homeless men have been widely studied and described in countless articles. The total population includes employed and non-working, men and women, middle-aged and elderly, alcoholics, mentally ill, addicts, physically disabled. The first step in assessing housing needs is to differentiate the varied social and physical needs, housing preferences and capacities for independent living. The determining factor is not the nature of pathology, age, or sex, but relative capacity and desire for independent households. For individuals low-cost small dwelling units are appropriate. Others require a protective, semi-institutional setting. Between these two extremes is a third group—this includes the marginally functional or mildly disabled, those who do not desire, or are unable to assume housekeeping responsibilities, the persons for whom isolation has a debilitating effect. For the semi-dependent group congregate housing is a social and economic necessity.

For the first time federal legislation takes into account the unique housing needs of this portion of the SRO population. Sections 114 and 207 of the Housing and Development Act of 1970, sanction congregate housing for elderly, disabled, and single persons displaced by public action. The 1970 Act "encourages" Housing Authorities to develop congregate housing, and extends it to the 236 and Rent Supplement Programs. This opens the doors for new directions in housing.

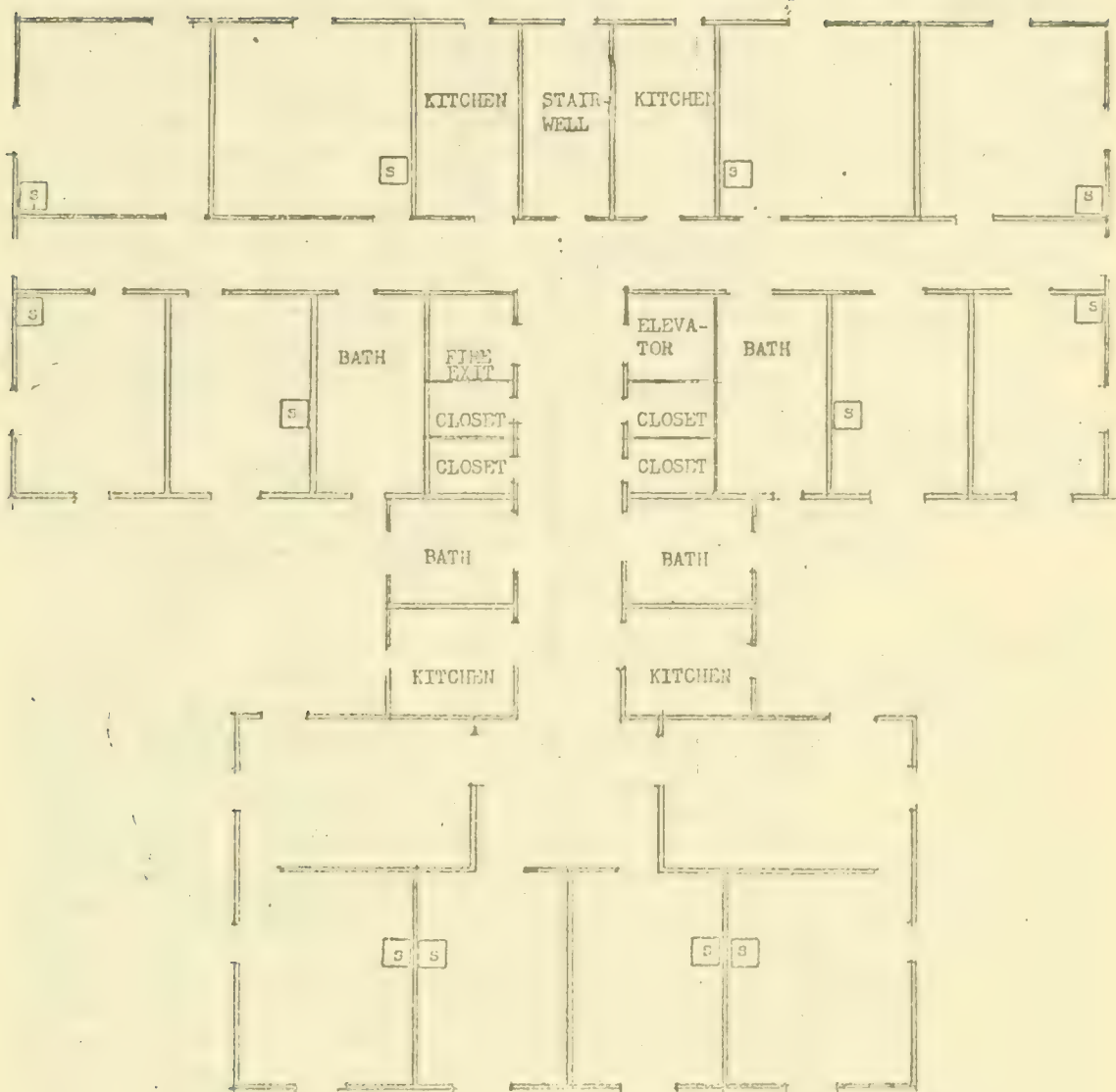
Because the non-family segment of the population has never really been planned for, very little is known about how best to design their dwellings. They live primarily in housing that was never designed for them, but converted from other use into furnished rooms. What little housing has been planned for single men and women was built long before housing standards were effective controls. As housing regulations and public programs emerged, they were geared to family life. Planning for the "non-family" person calls for new concepts of housing.

CONGREGATE HOUSING AS A DESIGN FOR LIVING

It is proposed here that congregate housing should provide single rooms with individuals sharing bathrooms, kitchens and living rooms (as families, friends or college students share common space). All such housing would include central space for recreation and tenant services and in some cases central dining; however, the emphasis here on the living area. This should be arranged in suites or groupings to create small social living units. This would be neither institutional nor dormitory housing. It would be a residence designed to maximize social interaction and reduce household responsibilities. It would be housing geared to the desires and capacities of the semi-dependent group of single room occupants.

To arrive at such housing, creative architectural concepts must be developed. The goal of the architect is to design housing that is socially functional, based on the nature of tenancy to be housed. Two examples of congregate housing are presented here.

PLAN A.

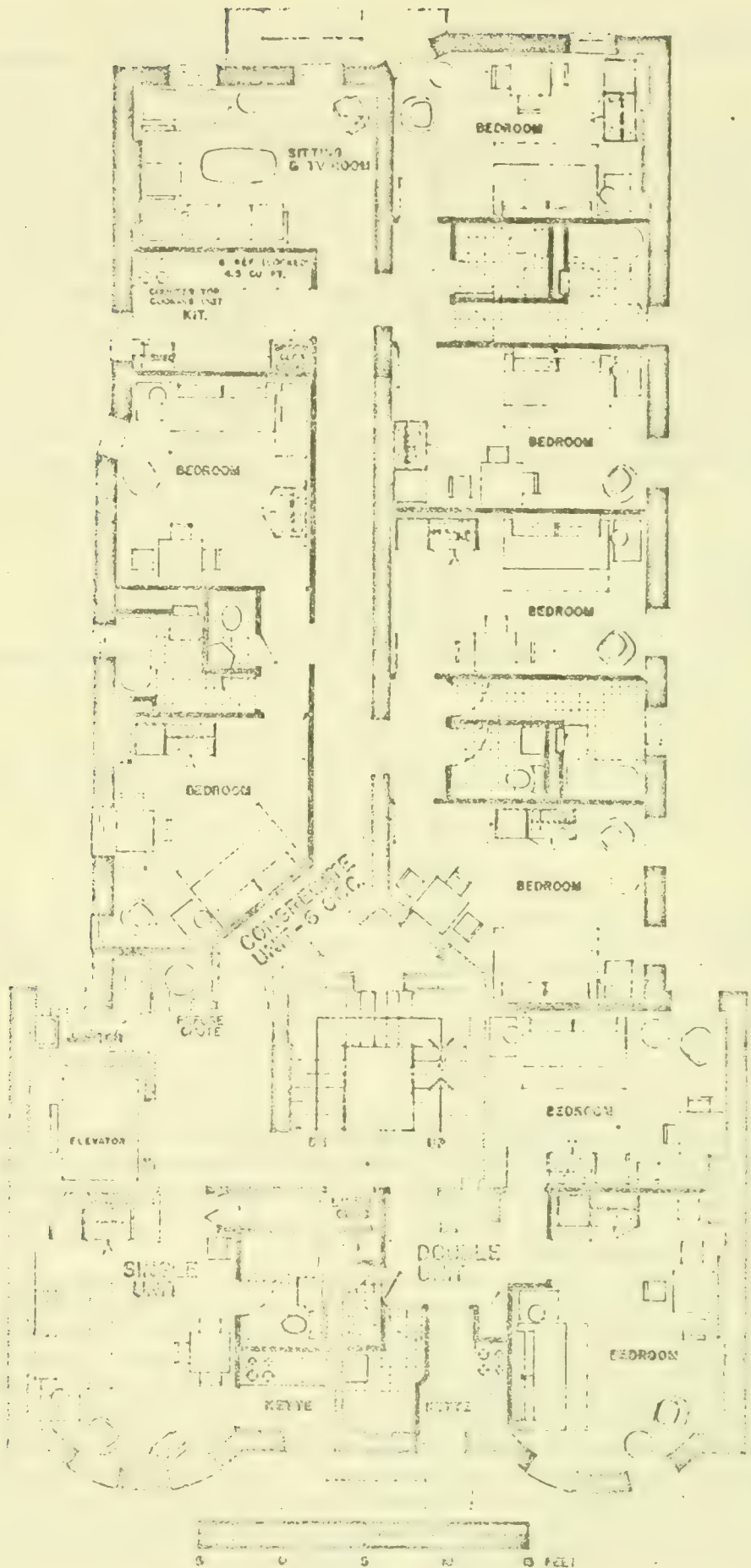


(PLAN B - OVER)

Plan A. is an existing building in New York built in 1929 to house older people. The building includes central dining and recreation space on the ground floor. The living area illustrated here is a suite arrangement with 3-4 persons sharing kitchen and bathroom. Average room size is 150 sq. ft. and each room has a sink. There is a sense of privacy about the suites similar to the privacy of a family in an apartment.

Plan B. was recently designed by Kaminsky and Shiffer, Architects, P.C. (authors of "Model SRO" prepared for a Community Planning Board). This plan was requested by the Planetarium Neighborhood Council as a prototype for congregate housing for SRO tenants. This community group, based on many years of experience in providing social services in SRO's, campaigned actively for federal legislation for congregate housing and is now urging HUD to allow the maximum flexibility for experimentation. The plan illustrates the Planetarium Council's concept of mixed housing including some units with shared facilities and some self-contained apartments, so that tenancy is diversified in functioning and style of living. It also offers the opportunity for including couples as well as single persons. In the congregate unit there is a communal kitchen and lounge for each six rooms, and bathrooms for every two persons. The design assures security and privacy for those residing in congregate units. The building proposed would

PLAN B.



utilize ground floor and basement space for recreation rooms and offices for delivery of health and welfare services.

Recently, the Housing and Development Administration began experimenting with rehousing the SRO population. An SRO was rehabilitated, financed through Municipal Loan and rent supplements. The building, known as the Admiral, provides 39 efficiency apartments for single persons with recreation space in the basement. Community Service Society, a local voluntary agency, provided social services to assist tenants in the transition from furnished rooms to apartment life. Although this transition was possible for some tenants, it has become clear that for a portion of the SRO population the Admiral was not suitable housing. Some individuals did not desire or could not adjust to the arrangement of efficiency apartments. For them there must be other alternatives. Housing choices for the single poor must be expanded. There must be something between the inadequacies of existing SRO's or lodging houses on the one hand and efficiency apartments on the other. Congregate housing as suggested above offers another choice, either as an interim step (a gradual change from SRO's to self-contained apartments) or as a permanent living arrangement.

This type of housing must be perceived positively. The history of housing is one of gradually raising standards. This is the goal of congregate housing. It is a more socially appropriate design for many unattached poor. It is a way of re-apportioning total housing cost to meet a specialized social and housing need. Current controversy about shared facilities, and its unfortunate negative connotations, requires clarification of the reason for this type of building.

RATIONALE FOR CONGREGATE HOUSING

Housing standards must be based on social needs, on personal values and housing attitudes of tenants, and on an understanding of the way people live and relate to each other and what their values are. Work with SRO tenants has made clear the loneliness and isolation of their lives, the marginal functioning of many and the priority concerns with safety and cleanliness. It is these factors which must form the basis for design of new housing.

Socialization Needs.—For single room occupants the need for contact with other people is very great. For those who are alone and poor, living in confined quarters, without resources for recreation, without friends or family and often marginally functioning persons, contacts with residents of their building become their only social experience. Service projects introduced in New York's SRO's demonstrated the importance of recreation and food programs as escape from loneliness and boredom. Joan Shapiro in her recent book *Community of the Alone* describes the "quasi-families" that emerge in SRO life. Skid-row studies repeatedly indicate the desire for companionship among the homeless men.

In the Admiral one elderly tenant continues to eat in restaurants as preferable to cooking and eating in her own apartment; she has requested help in moving back to a rooming house so that she can regain her welfare restaurant allowance. Another tenant expressed a preference for hotel life, stating she missed seeing people on the way to and from the hallway bathroom. Her door may be left ajar, but with little traffic in the hall the need for the accidental and casual contacts is frustrated. A great deal has been written about the stoop-sitting and people-watching phenomenon of isolated people. When the Admiral was ready for occupancy, fights and rivalries ensued among the tenants over who would get front apartments from which the "coming and going" of daily life could be observed.

Central dining and recreation rooms although important, are inadequate to meet the psychological needs of isolated and marginal people. Central food service is too costly for small projects, tends to become institutional in larger ones, precludes individual diets, and in some instances fosters dependency and inactivity. Recreation rooms often go unused by those who most require stimulation and engagement with other people, and are physically removed from areas of daily activity. Therefore in addition to central space, it is essential to provide small living units where movement and activity are casual and natural, where there is intermittent social contact as well as the opportunity for more sustained relationships. Communal kitchens and lounges can foster small social groups, encourage self-sufficiency and stimulate mutual assistance. A suite of rooms with common lounge, kitchen and bathrooms could be a substitute design for the traditional pattern of family living.

Bronx State Hospital has experimented with discharging mental patients to live together in apartments. With hospital staff support and supervision they could manage the housekeeping responsibilities and maintain stability in the

community for relatively long periods of time. By contrast, when individuals were discharged into separate apartments, even with staff services, the deterioration was much more rapid resulting frequently in rehospitization. This was found to be true in the Admiral. The confinement and isolation of individual apartments as compared with the social stimulus of hotels or SRO's, resulted in marked physical deterioration and an increase in agitated, "psychotic" behavior of some tenants. Personal deterioration was an unfortunate by-product of "improved" but dysfunctional housing.

Security and Maintenance Problems.—It is sometimes argued that buildings with shared facilities lend themselves to misuse. SRO tenants frequently complain about the use of toilets by addicts from the street, and the stealing of food from refrigerators. Fear of muggings in the halls is a harsh reality of SRO life. Dirt and broken equipment in communal kitchens and bathrooms create unsanitary and undesirable living. Some Bowery men have moved from their 35 sq. ft. "cages" into the comparatively "spacious" rooms of the SRO's, only to return to the Bowery out of preference for the security and cleanliness of well run lodging houses. Obviously the problem is not communal facilities, but poor management and poor layout of buildings. It is assumed here that congregate housing will be developed under proper management and with adequate building security. The physical layouts proposed here maximize the opportunity for good maintenance and security.

A design which creates small social units offers opportunity for tenant control and surveillance of common space. In the plans illustrated the congregate suites are arranged similar to separate apartments. Common doors could be locked with keys available to tenants residing therein. Corridors are straight and open to maximize visibility. In Plan B, the communal kitchen would have a separate locked refrigerator unit for each tenant.

The proposed layouts of living areas with communal facilities also make possible better maintenance. For many single room occupants, the housekeeping responsibilities of apartments are not desired. For some the prospect of cleaning stoves, refrigerators and toilets on their own initiative is an absurd expectation. In the HDA project two men were evicted, both of whom left their apartments after a few months in a state of disrepair and filth. For such tenants cooking and sanitary facilities in each apartment present health and maintenance hazards which threatens the entire building. Although tenant education and co-operative tenant cleaning of common rooms may be goals of social services in congregate housing, the arrangement of rooms makes possible the practical alternative of central cleaning.

If people are unable to cope with a living arrangement into which they are thrust, the result is deterioration of tenants, as well as buildings. The social and physical deterioration of SRO's is alternately blamed on tenants and management. In fact it is a mutual problem which stems from the fact that both building design and management are inappropriate to tenant needs. Congregate housing is better designed to ensure security and cleanliness, the kind of living environment to which all persons, irrespective of their incapacities, are entitled.

Cost Factor.—A final consideration is cost. In congregate housing there are two cost savings: the reduction in plumbing lines and fixtures; and space savings through common usage of bathrooms, kitchens, and living rooms. These factors only become valid rationale for housing if the savings can be applied saving through common usage of bathrooms, kitchens, and living rooms. These factors only become valid rationale for housing if the savings can be applied toward the increased maintenance, management and social services cost required by the target population. If communal rooms are to be effective living space, operating costs will necessarily be higher to reflect expenses of central cleaning and tenant services. The assumption here is that these costs can be offset through the savings of congregate design.

The cost factor is illustrated by considering the prototype plans. If private bathrooms and kitchens were provided for each unit, the construction cost would increase significantly. The size of each unit would have to be larger to allow for cooking and eating as well as living-sleeping space. This would reduce the number of rental units which could be produced. The result would be greatly increased rents as higher construction costs are spread over fewer units.

Such changes in design would destroy the potential of congregate housing. Aside from the fact that the concept of social living units would be lost, the possibility for self-supporting projects would be limited. With private bathrooms and kitchens, some projects would be economically unfeasible; rents would come out too high. Larger projects could be produced at feasible rents but exclusive of spe-

cial service costs. The alternatives would be to eliminate extra maintenance and social services or to find other resources for financing them. The latter approach is unrealistic for more than a few demonstrations which would not be capable of duplication. On the other hand, the omission of special maintenance and conjunctive social services means screening out the very tenants for whom this type of housing is designed.

This complex interrelationship of cost factors with social needs and maintenance problems has been increasingly recognized. In his introduction of a bill to provide single room occupancy housing, Senator Goodell said: "The management of SRC housing is critical to its success. For that reason, provisions in my bill provide that maintenance cost be included within the total project cost allowed by the Federal Government. In determining the eligible mortgage limits in Section 236, the fair market rental for the rent supplement program, and the amount of annual Federal contribution for public housing, management services shall be eligible for inclusion." (*Congressional Record*—Senate, Aug. 25, 1967)

In his article "Needed: A New Kind of Single Room Occupancy Housing", (*Journal of Housing*, Dec. 1968), Herbert Levy outlines a plan for a building in which social services would be covered in the rents. He concludes: ". . . One can add to the monthly rental income . . . a proportionate monthly share of in-building services program. Allowing for some overlapping of personnel, estimated income approximately meets projected operating costs. The optimum SRO housing project, as conceived, is economically viable measured against existing subsidized, low-rent public housing."

Public housing has long been plagued with the question of "problem families." The Housing and Urban Development Act of 1970 included a provision specifying that tenant services could be included in the operating and maintenance and costs of public housing. How much more significant is this concept when we plan housing specifically designed to compensate for physical and social disabilities.

CONCLUSION

Thus congregate housing becomes a new frontier for housing design and standards, in which cost factors are integrally related with the socialization needs and housekeeping difficulties of marginal semi-dependent single room occupants. Unless housing planned for this group is economically as well as socially realistic, they will continue to be excluded and rejected. The single room occupant will be doomed to remain in his "cage" or his barren furnished room as the "forgotten man" of the housing field.

The alternative of congregate housing as outlined here is not just a physical and financial plan for shelter. It is a concept of a total living environment that is decent, of high standards, and which provides isolated individuals something akin to what is the goal of a family housing—shelter that accommodates the activities of social units. It should be viewed as a gestalt—a plan that combines physical and social concepts and that inextricably links services with housing.

Only in this way will standards be related to people and will the single room occupants be encompassed within the national housing goal of "a decent home and suitable living environment." The emphasis is on "decent" and "suitable." For the unattached poor the search for what this means is just beginning. The road ahead must be paved with creative talent, the courage to experiment, and a commitment to the concept that housing is for people.

DURHAM, N.C., July 19, 1973.

HON. JOHN SPARKMAN,
Chairman, Committee on Banking and Urban Affairs, Dirksen Senate Office
Building, Washington, D.C.

DEAR SENATOR SPARKMAN: As chairwoman of the Mental Retardation Inter-agency Planning Council in Durham, I am writing to express the strong support of this group for bill S. 1579. As laypersons and professionals who work on behalf of the retarded who cannot speak for themselves, we feel this bill will fill a great need. We are hopeful that you will give it your support.

Enclosed you will find a listing of the groups we represent. Together these comprise a large segment of the social agencies in Durham city and county.

We would be most appreciative if you would notify us when the bill comes out of committee. Thank you for your consideration in this matter.

Yours truly,

DOROTHY CANSLER,
Chairwoman, Mental Retardation Interagency Planning Council,

STATEMENT OF HOBART C. JACKSON, CHAIRMAN, NATIONAL CAUCUS ON THE
BLACK AGED

HOUSING AND GERIATRIC CENTERS FOR AGING AND AGED BLACKS

It's a real pleasure for me to be with you this afternoon to discuss the concept of Housing and Geriatric Centers for Aging and Aged Blacks.

Before, however, moving into the presentation of my special assignment, I think it is appropriate to give some background related to the assessment of the general climate in which we are developing the concepts that we have in mind.

I recently had the opportunity of attending a Symposium in New Orleans put on by the National Association of Social Worker having to do with "Social Justice and Social Work Practice".

At that symposium there was an effort to explore the contemporary application of the principles and concepts of social justice to social work practice in four major delivery systems as follows:

1. Income Maintenance
2. Physical and Mental Health
3. Public Education
4. Juvenile and Criminal Justice

The most meaningful relevance of that conference to my own concerns was the recognition of many, or perhaps even most, of the delegates that there are two sub-systems operative within each of these four major delivery systems—one for the poor and one for the more affluent. It is in these systems that we see America's two most urgent and as yet unresolved domestic problems manifesting themselves. I refer to the problems of racism and poverty. Obviously there is an urgent need to develop one human service system to deal with the urgent problems of health, education, welfare as well as law and order.

My definition of a system, of course, which I have given many times is as follows: "A system as involving the aging and aged is that complex of interrelated entities that includes all the persons who are aging or aged in this country; the agencies, groups, and institutions that provide services, including financial support to them; the research and training that affect the provision of services; and the laws, policies, and programs under which these services are provided." Systems, of course, may be large or small, depending on the extent of the clientele with which we are involved.

To call all of what we currently have a system, of course, is not to suggest in anyway that it has well-defined, commonly accepted goals and coordinated programs for reaching those goals. As a matter of fact just the opposite exists. Our human services systems not only with the aging, but throughout, are so uncoordinated that they behave in a very fragmented kind of way.

There is no doubt in my mind that America is an underdeveloped nation in the fields of health, education, welfare, and social justice. When we usually talk of the underdeveloped nations of the world, we tend to place a primary emphasis on economic development, but I contend that America is underdeveloped in the areas just mentioned—and for that reason I am not bullish on American as Merrill Lynch and the President may be.

The poignant and urgent problems of racism and poverty are not receiving attention. Very little, if anything, is happening to bring about a redistribution of our power or our wealth—the only approaches that might tend to move us ahead in the attacks on these two evils that are so inextricably interwoven into the very fabric of our society.

This afternoon I'd like to add a fifth system to the four major systems that I enunciated earlier—that system would be our housing system—where again despite how glibly we talk about the fact that good housing should be available to all without regard to race, creed, color, or other such circumstances, we know that our actual performance leaves so much to be desired. Our sub-systems of one for the affluent and one for the poor are definitely operative in this area. It is estimated that 75% of the Black elderly live in substandard housing.

In the area of Federally subsidized housing, for example, which I am most concerned about, less than one percent of the tenants in white-sponsored housing for the elderly developments are Black—and there are a very limited number of Black-sponsored projects. I refer you to a recent study by Dr. Powell Lawton and Ms. Eleanor Krassen entitled "Federally Subsidized Housing Not for the Elderly Black."

We could expand on the extent of the problem by providing much more detail, but let's move quickly and briefly to another consideration—that of nursing homes where a comparable situation exists.

The latest information available from the National Center for Health Statistics of the Health Services and Mental Health Administration of the U.S. Public Health Service points out that minorities constitute only 4% of the nursing home population. Of this total, Blacks represented $\frac{3}{4}$ or about 3%. A very limited study of extended care facilities that were participating in the Medicare program in 1969 conducted by the Office for Civil Rights revealed that minority patients constituted just over 5% of the total patient load in these facilities. This despite the fact that the Black elderly alone constitute about 8% of the total elderly population and the fact that our Caucus believes they should have access to programs, facilities, and services beyond this population proportion because of the multi-dimensional aspects of their problems. All of the information we have terribly needs updating but we are certain the current climate in America has not resulted in improving this situation. We believe as a matter of fact, it's much worse. For example, among other difficulties, our non-profit church related homes for the aged are not admitting their Black members except in very small token numbers—some not at all.

So much for a very brief assessment of the current situation. Let us then move on to some possible solutions.

Because the current systems of housing and nursing homes for the elderly have not been effective in meeting the needs of the aging and aged, primarily as I see it, because of the isolated nature of these developments, we are recommending very strongly that a movement be undertaken for the development of geriatric centers in Black communities. These communities are ripe for such developments because of their virgin nature with reference to programs, facilities, and services or because of the paucity of such programs, facilities, and services in these Black communities.

One of the most popular and effective programs around today is that of the multi-purpose, multi-service senior center, which usually serves a particular neighborhood or community and which may provide or make available a tremendously wide range of services to their members at the center in the elderly person's own home or at some other agency or setting. Some of these centers were started or have been operating for some thirty years or so, but their mushrooming growth has taken place within recent times. The City of New York, for example, has more than a hundred of these type centers operating according to information shared with me some time ago.

By a center we are usually talking about something more comprehensive than a Golden Age Club where the focus may be just on recreation. Some centers today are prepared to meet all the needs of their members in the health and welfare area either through direct services or by referral to a service. Such a referral may sometimes involve actually taking the person to the particular service involved or needed. By a multi-purpose, multi-service Senior Center we are talking about those centers that are most comprehensive in their approach.

According to one of the Senior Opportunities and Services publications of The National Council on the Aging "Providing for basic needs sustains life and frees men from debilitating concern for physical survival. But it is man's possession of higher-order needs which sets him apart from other species." We've all heard the expression, "Man does not live by bread alone"—man's life is less than human when higher-order needs are neglected.

Among others we have what are referred to as "love and belonging needs". Each of us must have a sense of being a part of the human community—a sense of sharing in the resources, problems, and feeling of others. We need to be a part of the reciprocity of human interaction. We need to share emotional investments with others, to love and be loved in return.

Then there are the "esteem needs". Men and women need positive regard of their fellowmen and women to be held in esteem, to be respected for their capabilities, strengths, and contributions. At the very least, an adult feels the need to be regarded as a competent, fully franchised member of society.

Finally there are the "self actualization needs". Men and women seek a sense of fulfillment—a sense of having realized their potentials, of having made use of whatever strengths and aptitudes they possess. Though no one is fully self-actualized, we continually feel the need to grow to be useful. At the very least most men and women tend to seek some measure of independence and self-reliance.

Unfortunately along with a denial of certain basic needs that the Black elderly have, there is a social denial that these needs of a higher order really do exist for the Black and minority elderly.

I think Senior Centers strategically located in Black neighborhoods and communities represent one way of recognizing that these needs really do exist and I suggest the development of a network of such centers as one way to get services to elderly Blacks—keeping in mind, of course, that no amount of services is really going to be a substitute for their most basic need in today's society—Money. That need incidentally can only be met in my opinion by a guaranteed annual income far above the so-called poverty level.

The model that I am proposing this afternoon involves the development of housing, nursing home, and multi-service center complexes in Black communities into one complete geriatric center serving all types of elderly persons but having the capability and the flexibility to meet their needs on both an institutional and non-institutional basis even if it's one, two, four, ten, or 24 hours of care and services required.

These developments should come expeditiously if they are to be meaningful for we cannot remove deficiencies or inequities by either maintaining the status quo or by just moderate progress. This model has the potential for resolving many of the multiple problems now confronting Black communities across the country.

With reference to the housing aspect of the development we already know that housing without needed services just isn't good housing. Think of the potential of a housing development for the elderly providing access to other service agencies whose offices might be housed right within the development—implementing the concept of a kind of one stop service to resolve multiple problems.

Another plan which is already underway in this country to develop a system that will enable older persons to remain in their own homes or other places of residence for as long as possible is a commendable one in its own right and one which carries with it some noble aspirations, perhaps some worthwhile possibilities, but also some unfortunate implications for the Black elderly. I therefore subscribe to and endorse this new effort for "in-home care" and for living support social services, but with certain definite reservations and modifications.

To call such a system "alternatives to institutional care," however, I feel, is to imply to many such a system is a substitute for institutional care rather than a supplement to such care which I feel it should properly be. In some quarters it is simply understood as an effort to deny and not face up to the need for a strong and viable system of nursing home care, which we do not now have and which is desperately needed—and, as a result, not really meet head on the documented costs of such care for the poor who need it and are obviously unable to pay for it.

I am speaking this afternoon to the need and desirability of developing viable and interlocking systems of housing and nursing home care and efforts to keep persons in their own home, making more flexible use of housing facilities and the institution to provide services to persons on their waiting lists as well as developing other kinds of non-residential and non-institutional services and programs. The nursing home and housing developments under such a development could be utilized as a medium of services to and from the community.

The rationale, in general, for the current emphasis being placed on the development of alternatives to institutional care seems to be related to the finding that there are many older persons in nursing homes and other sheltered care type facilities who should not be there and who would not be there if acceptable and appropriate alternatives were available to them.

Although more research, as suggested earlier, may be needed to document more completely the positions that have been developed by the National Caucus on the Black Aged on this subject, we want to share with you this afternoon some aspects of those positions.

We feel that there is a special Black and/or minority dimension of this problem as there is with most of the needs areas.

The difficulty that we increasingly find in our work with the Black aged across the country is that the problem is almost the reverse of, or diametrically opposite, that of the aged generally. The problem essentially is not how to keep the older Black person out of an institution, it is rather how to get him or her in a good one. Older Blacks are already in their own homes or other places of residence, but, of course, without necessary and essential services. Many times they are in a back room somewhere, without visibility and without access to or even knowledge of existing resources or services.

We talk, for example, about our edifice complex and an over-emphasis on bricks and mortar. Such overemphasis just does not exist in black communities. We are arriving at a point of disenchantment with bricks and mortar at a time when there are no housing or nursing home structures of any consequence in black and minority communities, with all due regard to those that do exist.

To repeat, it would seem to me that a proper objective of the development of a system of alternatives to institutional care should be to supplement a viable system of housing nursing home care (which we certainly do not have) rather than attempt to be a substitute for such care. My emphasis then is on the need for housing, the need for the institution, and the need for alternatives or non-institutional services.

The President has escalated the unfortunate situation in nursing homes into a position of prominence but I have yet to see a positive system emerging from his expressed concerns. I see instead a punitive approach which may result in the closing of many nursing homes that are attempting to serve the poor, through the invoking of such requirements as the Life Safety Building Code, on the grounds that they are not meeting standards. Other facilities, of course, that perhaps should be closed will also be terminated in the process. But I do not at this time see any evidence of any concern about enabling those that are desperately trying to actually meet standards criteria. Why not make available special resources to them so that the criteria can be met.

The current program involving the bringing together of Medicare and Medicaid standards and encouraging the development of intermediate care facilities is fraught with many risks and dangers related primarily to not having the services of professional personnel when needed. It moves us even further in the direction of having paraprofessionals work with the poor and professionals working with the affluent.

There is no reason why the home for the aged or nursing home should not itself become (especially in minority communities) a center of service to and from the community. With this approach we point up the desirability and necessity of the Home's involvement as an integral part of the community and the ways in which Homes can broaden and extend their sphere of services and influence, so as to make some definite break-through in becoming viable organizations in the mainstream of those agencies and facilities that are providing health, welfare, and related services to and with the elderly.

What are some of the new services that are emerging to help keep people out of institutions? They are to name a few: (1) better housing and living arrangements, much of which is designed especially for older people, (2) foster family placement of the older person, (3) meals on-wheels or similar food-service type or nutrition programs, (4) multi-purpose senior centers, (5) day care services, (6) special information, counselling, and referral services, (7) homemaker, home-health aide services, (8) comprehensive home care programs, and other similar undertakings.

Most homes that have met the challenge of these new services head-on by providing comprehensive care have found that their waiting lists for admission continue to increase, while those that have tried to hold on to the traditional concepts are experiencing or are being confronted with empty beds.

How are those homes that are attempting to do something about this problem facing up to this responsibility? What are some of the services, institutional and non-institutional that they are offering to meet the obvious demand?

They are meeting the demands for institutional services for the handicapped, the disabled, and the chronically ill by building new or adding on to their infirmaries so that intensive nursing care is beginning to be taken for granted in these facilities. In addition other restorative and rehabilitative services such as physical and occupational therapy in addition to other basic health services are being added. Social, spiritual or religious, psychological, and psychiatric services have become a basic part of the programs of these homes, for it is realized that unless there is proper attention to the social and psychological concerns of residents, convalescence can be blocked.

Now specifically as to some non-residential or community-type services that are being provided. Homes are beginning to take a look at and really evaluate the persons who are on their waiting lists and determine how their needs may be met short of institutionalization. Would it be possible for a particular applicant to stay at home and receive his meals? Could he come to the Home and receive his meals? Are there certain other kinds of supportive services in his home or at the institution that would foster the prolongation of his independent living? What is the potential of the Home becoming the hub or center of activities of a community and its aging? Can it become a medium for non-institutional services? Can it become the focal point for a multi-purpose, multi-service approach to the resolution of the many problems of the elderly?

It is this kind of flexibility that will match services with needs that will put the home for the aged in the mainstream and forefront of the providers of services to the elderly.

It is inevitable that more and more homes for the aged will become involved in these type programs and emerge as fully community related and oriented facilities if properly encouraged and enabled to do so, moving them toward becoming bona fide geriatric centers.

There is hardly any limit to the areas which a particular institution might go in meeting these needs. What agency could be more qualified to meet these needs and provide these services than a well-run housing and nursing home development staffed with professionally trained personnel? Indeed it may make use of and indeed it should make use of existing community resources as it begins to reach out to those older persons that are not its residents.

Family service agencies and others may be worked with in the development of counselling and referral services or the foster family placement of the older person.

The development of relationships with clinics, recreation centers, vocational and rehabilitation facilities, employment opportunity agencies, and other organizations becomes a kind of natural course with such facilities. The real need for a professional social service evaluation at intake in order to be relatively sure that the applicant and the most suitable facility are properly matched becomes most important to bring order to these relationships. Why not a homemaker service or home health aides provided by the institution itself? Why not a multi-purpose center under the sponsorship of the facility? Why not a home care service, stemming from the nursing home or housing development?

The kind of construct or model we have discussed would be of particular adaptability to the Black elderly and the elderly of minority groups.

We see the development of multi-purpose, multi-service geriatric centers providing both institutional and non-institutional services and strategically located in these minority neighborhoods. Preferably they would have about 50 to 100 beds, although for economic reasons there might be more than this number. This is the kind of facility that we are in process of becoming at Stephen Smith Geriatric Center—although we may be somewhat larger than we should be to do the kind of job we have in mind. When a facility becomes as large as we are, dehumanization is difficult to preclude. Incidentally we envision not only implementing the geriatric center concept but see how this could be expanded into satellite centers serving a much broader physical area and community including the utilization of churches and other facilities already available.

In this connection the U.S. Department of Health, Education, and Welfare should make available 100% financing for the development of black sponsors of nursing homes; 100% grant money for construction; operating reimbursements for residents and patients at a level consistent with the costs of care and services provided; and 100% funding for the development of alternatives, non-residential, or non-institutional programs. Blacks and other minority sponsors are not able to take advantage of Hill-Burton provisions and other matching formulae plans because of inability to produce the matching funds and are not usually in position to amortize loans because of escalating operating costs. This same approach for housing the elderly in Black and minority communities should be made by the Department of Housing and Urban Development.

The old tendency to plan for the Black elderly imposing standards upon them is a hardy perennial that we should shed immediately—although it's obvious that it will persist in plaguing us. We've got to learn how to plan *with* people instead of *for* them. We must recognize the strength of elderly minorities in developing and helping to carry plans that are going to be in their best interests. Their self-determination must be an important ingredient in our efforts.

What continually surfaces from them, and I refer back at this time to the National Conference on the Black Elderly put on by our Caucus in Washington, D.C. two weeks prior to the White House Conference where some 800 elderly Blacks from 20 states articulated their views and made resolution for resolving them—what continually surfaces is the need for any open society.

I agree with Whitney Young who once said, "our goal must be to move beyond racism to a truly open society. A society in which each human being can flourish and develop to the maximum of his God-given potential—a society in which ethnic and cultural differences are not stifled for monotonous conformity—a pluralistic society, alive, creative, open to the marvel of self-discovery."

An open society is not merely an integrated society—one that grudgingly allows Blacks and other minorities some of the privileges of that society. It is rather one that offers some options and choices. There are a few Black elderly who may want to enter existing housing, nursing homes, and geriatric centers in predominantly white situations. They should have that opportunity. But there are also those who, for whatever reasons, want to remain in their own communi-

ties. Such a choice should not be penalized by inadequate services, discriminatory practices, and open hostility. It should be simply one choice that they should be free to make.

Access to viable multi-purpose, multi-service geriatric centers in their neighborhoods with both institutional and non-institutional services is a choice that ought to be open to them.

Unfortunately I have not had an opportunity this afternoon to get into this whole area of implementation. Suffice it to say that to get the concepts that we have discussed this afternoon implemented would certainly require the development of massive social and political action programs, for we are all aware of the repressive nature of the climate in this country currently.

Color is the great divide in this country. Others may suffer some inequities because of their religion or other circumstances, but the full weight of racism and prejudice must be born by Blacks, Indians, the Spanish-speaking, and Asian Americans.

Will Blacks and other minorities get a fair share of the new funds and programs becoming available in the field of aging? Will the Federal Government finally adopt some kind of performance criteria to see that elderly Blacks are at least served by these programs to the extent of their population representation? Current programs are inadequate. Matching funds requirements have no meaning to minorities because of their inability to get the matching funds together. Will the Federal Government, under its own initiative, begin to recognize and deal with these inequities? Or must the initiative always come from those who don't have the power or resources to change things?

As we move ahead, the overall attack must be an attack on powerlessness: the overall objective must be the redistribution of power,—social, economic, and political—as the primary means of destroying these barriers to an open society. A redistribution of income is vital if the Black elderly are to be removed from the kind of grinding poverty that no one was meant to endure. The implementation of a goal of power for the powerless would give the minority elderly the priority position they deserve.

Instead of the President, Congress, the governmental bureaucrats lamenting our economic scarcity, a creation of our own ineptitude, we simply need to concentrate more on the removal of these inequities. We need to move as someone has well said—

“From problem-solving to systems-changing

From servicing to belonging

From emphasis on the improvement of race relations to the elimination of racism and achievement of social justice

From liberalism to liberation

From an emphasis on changing interpersonal relations to a basic change in power relations

From emphasis on equality to equity and empowerment

From giving equal opportunity to creating an equitable society.”

STATEMENT OF CHARLES B. WHEELER, JR., MAYOR OF KANSAS CITY, MO.

On this occasion of Senate Committee hearings on housing and related matters, the City of Kansas City, Missouri is pleased to present its observations and assist the committee in its research. We appreciate the intentions of this committee to obtain a wide range of views in its current hearings.

Our comments reflect general and specific observations on how programs have worked and what we would prefer to see changed. A number of major concerns stand out.

1. Federal housing programs and their administrators have been preoccupied with the provision of housing measured in numbers of units with little thought given as part of an environmental setting.

2. National policies and programs have reflected confusion about the people they should serve. Not surprisingly, policies and programs that have something for everyone become very costly and ultimately are too great a burden for any government to carry.

3. Programs have been developed and implemented in rapid succession with little testing and evaluation. Consequently, they have been discarded with equal speed.

4. National housing and urban development policy has not enabled local governments to manage their future and has not enabled them to develop local housing and development strategies.

I. LITTLE CONSIDERATION FOR ENVIRONMENTAL SETTING

The production of new units fits very much the image of America—we like to produce new things rather than bother with the old. As we have come to learn in recent years, however, America is not the land of unlimited resources. While we may have much land fit for new development, we cannot afford anymore to discard whole sections of our cities because they are not new. Material, labor, and land costs have increased, and financing has caused a multiple inflationary trend because it reflects both increased construction costs and interest charges.

The performance of national housing programs has been measured almost purely in terms of numbers of unit produced, demolished, and rehabilitated. Housing, however, is more than units; it reflects a life style, a set of preferences, and a community. Neither new nor sound housing units alone make for a desirable living environment. As such, the infrastructure needed to establish a community must be part of our housing strategies and should constitute a total environmental approach. Schools, accessibility, crime, churches, shopping, recreation and neighbors are as much part of the choice that people like to make regarding housing as is the unit itself. Therefore, a national housing strategy of which housing programs are a part must include an increased capacity for cities to manage and to maintain the value of existing neighborhoods and environments, and should also include measures to improve the quality of housing developments.

As part of the national fascination with the production of new units has come the expectation that housing standards applied to new units are the standards that should apply to most housing. As a result, building and housing standards have been applied to the older housing stock, which in turn may fall below these new code standards. While admittedly such standards are the instruments of local government, we should not forget that many communities were forced to adopt such codes as part of the Workable Program requirement. There is no disagreement that we need some minimum level of decent, safe, and sanitary housing. However, it should be understood that the federal government cannot force high housing code standards upon municipalities on the one hand and fail to reinforce housing production for replacement units on the other hand.

It is clear that despite the plethora of housing programs, as a nation we are not clear about the external effects of the various programs promulgated to date. Thus, new units do not necessarily produce better living environments and high housing code standards are set independent of housing production capabilities.

II. CONFUSION AS TO WHO IS SERVED

National housing policies to date have reflected a usually momentary consensus about governmental responsibilities in housing and to whom programs apply. Priorities have shifted repeatedly and drastically in numerous programs. The complexity of these quickly conceived programs has spawned a whole new set of actors, whose sole purpose is to interpret the nuances of the many regulations, both legislative and administrative.

Housing long ago passed the stage of merely being a reflection of individual choice. The type, quality, and quantity is now dependent on cost limitations, administrative and legal judgments as to appropriate location, and finally on a perverse set of incentives and disincentives. Policy usually is based on a set of trade-offs between the interests of the housing industry and the consumer. Development and redevelopment activities have been burdened by paperwork, concentrating on physical rather than environmental renewal, and have only relocated the problems.

The discussion of problems can indeed be an engaging exercise. However, the major impression that comes across is the existence of special purpose programs, administratively and programmatically complex, frequently working at cross purposes. And often the ultimate purpose is not clear. A nation cannot attempt to reestablish cities if we kill them simultaneously with freeways. A nation cannot indefinitely support new development if the resources, materially and financially, are scarce. A nation cannot create full employment if the employers move away from the employables. A nation cannot build housing if that housing is beyond the means of most people. Most importantly, a nation should not cajole local governments and individual consumers into certain kinds of actions unless the consequences are explored.

The role of government then is to take a holistic view and determine at what level it needs to function to create a national housing strategy and to bring about the national goals. Decentralization through the establishment of Regional and Area HUD Offices has not brought government closer to the local communities except geographically. Policies are still made and interpreted in Washington. We have now reached a stage where policy is created in Washington and administered in regional and local offices. But the nature of bureaucracy is such that the lower the level of the bureaucrat, the less room for innovation there is. Thus, localizing the federal government has essentially stultified opportunities for local adaption to federal guidelines. Guidelines have become rules, and the slightest deviation must be interpreted back in Washington, D.C.

This situation must be reversed, and decentralization of federal offices has *not* been the answer. Instead, program outlines should be suggested, preferably adapted to regional differences, with implementation to be carried out at the local option. HUD offices would then be cast in the role of advisors to local and regional government, rather than administrators of funds.

III. LACK OF PROGRAM TESTING AND EVALUATION

Government programs have been developed and initiated with little or no testing or evaluation. This has led to inefficient administration, harm to urban neighborhoods, and discontinuation of these programs. Detroit and Kansas City (on a smaller scale) are good examples of how the location of cosmetically repaired "235" houses has led to major concentrations of problems and in essence a transference of ghetto problems. The lack of analysis by HUD, coupled with speculative real estate activities, has produced a setting that is harmful to cities.

There has also been an unbounded and untested faith in the necessity of involving the private components of the housing industry in subsidized housing production. While a marriage of convenience between government and private industry is not undesirable, essentially experimental programs such as the "235" and "236" programs were structured such that implementation was placed in the hands of the real estate industry and private entrepreneurs. The experiences with these two programs have shown that program shortcomings were quickly turned into financial gains for private industry. Programs should attempt to bring discipline to, while providing incentives for, the private housing development system in order to meet the nation's housing needs and to avoid problems arising from lack of evaluation. The question that remains is what kind of program evaluation do we want if evaluation by virtue of experience has not been efficient. Without continual evaluation and analysis on the part of the government, evaluation by virtue of experience is indeed very costly.

In addition to prior evaluation of programs, evaluation must also be built into on-going programs. It is encouraging to see the considerable amount of testing and evaluation taking place in conjunction with an experimental program, the Direct Housing Allowance. It may, and should, in the end change our rather shortsighted system of special-purpose programs, spontaneously instituted and frequently drastically discontinued.

IV. NEED FOR MUNICIPAL DECISION-MAKING AND MANAGEMENT OF THE FUTURE

The thrust of national housing and urban development policy should be to enhance the capability of local governments to manage their future based on a local housing and development strategy. Much of the discussion so far has dealt with national policies and programs for which to date, at least from our vantage point, no consistent or effective strategy for implementation exists. We suggest that within the framework of a national policy to decentralize decision-making in the area of housing and development, municipal government can best carry out those responsibilities. However, municipal government must be afforded the opportunity, and indeed should be expected, to attract competent staff in order to develop a local housing and development strategy based on local conditions, and to manage the anticipated and desired changes by exerting effective local control over programs.

Conceivably, this incentive can be provided through "701" planning and management funding in conjunction with the arrival of Community Development Revenue Sharing. The use of these "701" funds would provide an effective means to develop local strategies consistent with national goals, and as such create a framework for evaluating the management capability of municipal government over time.

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July 24, 1973

Hon. Carl A. S. Coan, Staff Director
 Subcommittee on Housing and Urban Affairs
 Committee on Banking, Housing and Urban Affairs
 United States Senate, Room 5226
 New Senate Office Building
 Washington, D.C.

Dear Mr. Coan:

Pursuant to your request, and in accordance with conversations with Mr. Rodney Solomon, Legislative Assistant to Senator Robert Taft, Jr., I am submitting herewith a Statement to the Subcommittee, dated July 27, 1973, and directed to pending Bill S. 971. In addition to the text of the Statement, it includes the following additional documents:

1. Comments on S. 971, 93rd Congress, 1st Session, to accompany Statement of Kenneth F. Phillips, July 27, 1973;
2. A memorandum dated January 17, 1971, entitled, "The Operation of the Program in Various Financial Situations";
3. A memorandum dated July 19, 1973, entitled "Information on Costs of Repairs, Reconditioning and Moderate Rehabilitation";
4. A Xerox copy of an article entitled, "Refinancing: A First Step Toward a Realistic Housing Program for the Poor", reprinted from the George Washington Law Review, Vol. 39, No. 4, May 1971.

Your consideration of the foregoing and their inclusion in the Record of the current hearings of the Subcommittee are very much appreciated.

Sincerely yours,

A handwritten signature in cursive script that reads "Kenneth F. Phillips".

Kenneth F. Phillips
 Director

KFP:ds

Enc.

cc: Miss Deena Sasson
 Rodney Solomon

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STATEMENT TO THE SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS,
 COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS,
 UNITED STATES SENATE

July 27, 1973

By Kenneth F. Phillips,
 Director of the
 NATIONAL HOUSING AND ECONOMIC DEVELOPMENT LAW PROJECT
 Earl Warren Legal Institute
 University of California
 Berkeley, California 94720

Mr. Chairman, I am director of the National Housing and Economic Development Law Project, a center funded by the Office of Economic Opportunity to provide support to Legal Service attorneys. As you know, there are about 2500 such attorneys who provide free legal advice and representation to low-income clients in all parts of the United States. Our center's housing work includes specialized counselling to Legal Services lawyers and community organizations, participation, sometimes as co-counsel, in important test case litigation in the housing field, and research. In addition to private landlord-tenant problems, this involves such diverse areas as urban renewal,

public housing, Workable Program requirements, the Model Cities program and the FHA programs. In the area of community-based economic development, we work closely with perhaps 30 or 40 community development corporations, or CDC's, as they have come to be known, and their lawyers, and undertake related research.

My comments to the Subcommittee will be directed to S. 971 and will be based upon these experiences of our center and the experiences of other lawyers providing legal assistance to the poor. I will speak first of the need for a reorientation of the present federal housing programs, how S. 971, particularly Title I, would contribute to this objective, and, second, of the need to include in the Committee legislation provisions to facilitate utilization of Local Housing Authorities as a means of combatting abandonment.

As this Subcommittee is well aware, much of the housing for low-income families in urban areas across the country has deteriorated to a condition below the level of human habitability, as defined by health and safety codes or by minimum standards of decency and civility. This housing is commonly rat-infested and strewn with garbage. Stairs and handrails are broken, furnaces don't function, wiring is hazardous, roofs leak. Basic maintenance is not performed and repairs are not being made. Many landlords have decided to "disinvest" in these properties or "milk" them. The tenants often spend so great a portion of their income for rent that the money remaining is not enough to cover the minimum costs of food,

clothing and other necessities.

Most of the people living in this substandard housing today will go on living there for a long time. Projecting population growth and realistic housing production, net of housing coming off the market, it is clear that these substandard units will continue to be the only homes available for millions of low-income families and individuals for the foreseeable future. They will be lived in for ten, fifteen or more years. Yet, except for a minimal number of leased housing units under Section 23, the few single family homes sold under the existing housing portions of the Section 235 program and the inadequately funded FACE programs, none of the benefits of the much vaunted federal programs is reaching this critical housing category.

If the requirement of the National Housing Act, that the housing needs of the poor be given the highest priority, is to be taken seriously, a broad reorientation of present programs is desperately needed in order to restore this housing and to preserve it at some minimum level of human decency. While the federal programs are not reaching this housing, market forces are. The recent abandonment of large numbers of often structurally sound and redeemable inner city housing units (100,000 units in New York City between 1965 and 1968, many of them structurally sound, more than 20,000 in Philadelphia, and thousands more in Baltimore, Boston, Cleveland, Chicago, Newark, Detroit and St. Louis) is only the visible tip

of the iceberg of persistent deterioration of the housing stock.

The causes of this phenomenon have been well documented and broadly publicized. It is common knowledge that all elements of housing costs have been steadily rising for many years. Property taxes, which are a direct and repressive tax on housing, have become the major revenue source for escalating municipal expenditures, including the costs of education and welfare. The cost of money in low-income areas, long redlined by conventional lending sources, has pushed steadily upwards for many years. Maintenance and operating costs, partly because of the general pattern of inflation and partly as a result of increasing hostilities and tensions between landlords and tenants, as landlords have failed to maintain their properties, have likewise pressed steadily upward. Caught between rising costs and tenants' incapacity to pay higher rents, landlords frequently decide to curtail-out-of-pocket spending. This means cutting back on the only area of cost within their control, that is, on provision for repairs, maintenance and operations. Whenever a decision is made to defer a repair, further deterioration, increased tenant hostilities, and greater future costs become inevitable. The economic result is the waste of thousands of critically needed and expensive to replace housing units.

The deterioration of the existing housing stock, as a result of this process, is paralleled by the general pattern of physical deterioration in inner city neighborhoods, which

has resulted from the inadequacy of municipal services. Garbage is piled up everywhere. Police and fire protection is inadequate. Schools are bad and overcrowded.

These are the problems that underlie the broad recognition of a national housing crisis or urban crisis. But these problems are not seriously addressed by the federal housing programs. As summarized in a 1971 article in the National Journal,^{*} the programs are indictable on at least five separate counts:

First, they are not reaching the poor and are reaching only a tiny fraction of the eligible families;

Second, because of cost limitations and related requirements, the programs are effectively unavailable in the urban areas critically needing assistance;

Third, they are costly and inefficient: over the 30 to 40 year life of mortgages which HUD expects to obligate by 1978 under Section 235 and Section 236, the total cost could be more than \$200 billion;

Fourth, they are triggering serious problems of social and political inequity;

Finally, they have encouraged shoddy buildings and irresponsible business practices on the part of industry.

The programs are not on target. The builders and real estate interests have magically metamorphised the reality of the collapse of inner city housing markets into a need to build more and more houses in the suburbs. Not only does

* The National Journal, July 24, 1971, p. 1535.

that approach fail to respond to the underlying economic situation of inner city housing but it drains off appropriations critically needed for that purpose and, in fact, exacerbates the situation.

The primary need at this time is to reverse the process of deterioration in the existing low and moderate-income housing sector by providing the financial means for upgrading substandard, but reclaimable units and to reverse the process of neighborhood deterioration and housing abandonment. One major step in this direction could be taken now and at a minimum cost. Thus, Title I of S. 971 would take advantage of the financial leveraging power of the FHA guaranty mechanism in order to refinance existing housing indebtedness over longer term priors, so as to provide the necessary capital for basic housing repairs and improvements and to refinance balloon mortgages. The general impossibility of securing loans from institutional lenders for purchase or renovation of inner city low-income housing is widely recognized. This unavailability has created a pattern of short-term financing at very high interest rates and, consequently, relatively high monthly debt servicing costs. Resources critically needed for repairs, maintenance, and operations are absorbed by these high debt service payments. *

S. 971 would break this pattern and replace it with FHA guaranteed long-term loans at unsubsidized interest rates. The net result would be an influx of private capital to

* For a detailed analysis of the interrelationship between available institutional financing and housing maintenance, see Sternleib, "The Urban Housing Dilemma, The Dynamics of New York City's Rent Controlled Housing", preliminary draft, Chapter II, New York City, 1971.

finance modest, but critical, repairs and improvements.

Thus, a typical \$3000 per unit five year loan, at ten percent interest, could support a principal of \$5230 without increasing monthly debt service payments if the debt were refinanced over a term of ten years and at an eight and one half percent interest rate; \$2230 would be made available for repairs and improvements of the housing unit. The property owner would be legally required to use the additional principal for that purpose, to the extent necessary to place the property in sound condition. The longer term period would be based on projections as to the number of years for which the specific property will be lived in and therefore be rent-producing and able to support a mortgage. The key to this plan would be FHA repayment guarantees to overcome the present unwillingness of private lending institutions to provide refinancing and improvement loans at low interest rates. Our center has prepared a memorandum, which I would like to offer for the record, analyzing the efficacy of the refinancing mechanism in the various financing situations that will be encountered in the operation of the program.

The additional capital of \$2000 to \$5000 per unit which might be made available by this technique would be sufficient to effect marked improvements with respect to the habitability of the unit. Thus, in a comprehensive study of the Baltimore housing market, Professor William Grigsby recently concluded that 20,000 housing units there could be rehabilitated at an average cost of less than \$2000; 47,000 units were found to need

repairs averaging a little under \$1000 per unit, and 8,000 needed replacement, at a projected cost of \$17,000 per unit. A recent study of rehabilitation costs conducted by McKinsey and Company for New York City's Housing and Redevelopment Administration, indicated that minor rehabilitation, including repair of plumbing and other mechanical subsystems, selective replacement of windows, doors and other accessories, and adding new amenities would average between \$1000 and \$2000 for old and new law tenements in that city. Similarly, the estimated cost of repairing mechanical subsystems, replacing accessories and providing amenities in San Francisco F.A.C.E. areas ranged between \$300 and \$3000 per unit, according to two independently conducted studies in 1971.

These studies and others like them indicate both the widespread need for programs of repair and renovation and the feasibility of the Title I approach. The \$2000 to \$5000 per unit could cover such items as basic clean-up and fix-up, repainting walls, replacing broken window glass and repairing sashes, repairing and replacing wiring, heating, and plumbing systems, as needed; providing good doors and strong locks for adequate security; repairing or providing fire escapes; providing adequate interior lighting; repairing roofs, spouts and gutters, and exterior repainting. I would like to offer for the record a memorandum prepared by our center which contains additional information on the costs of repairs, reconditioning and moderate rehabilitation, as found by these and other studies.

The proposed refinancing would maintain or reduce the property owner's current level of monthly debt service, depending on whether current cash flows are sufficient to cover all cash outlays plus a reasonable return on the owner's investment. Although he would pay debt service for a longer period of time, this apparent cost increase would be offset by an increase in the value of the property, lower maintenance costs, higher occupancy rates, better tenant relations, tax savings and various intangible benefits.

As I noted at the outset, our center provides close support to Legal Services lawyers in the housing area. Often this involves efforts to compel landlords to comply with basic housing, health and safety code requirements. In several jurisdictions, the courts have held that every residential tenancy includes a landlord warranty that the unit will be maintained in a minimum habitable condition, determined by local housing, health and safety codes. The Uniform Residential Landlord Tenant Code, recently adopted by the Commissioners on Uniform State Laws, adopts this approach. But too often the landlord's defense simply stated is: "Judge, I don't have the money to fix this place up; banks in my area are not making loans and I can't get the money; besides, even if I could get it, I would have to raise the rents to cover my increased costs and these tenants would probably leave." The present proposal, by making funding available to cover the costs of repairs and improvements would undercut this apologia. More important, however, it could provide

financing through the private capital market for landlords, who are willing to maintain their properties, to pay for critically needed repairs and improvements. As to those who are not willing, S. 971 provides a mechanism for the tenants or local Housing Development Corporations to buy them and make the repairs and improvements themselves. These provisions will infuse a new ownership flexibility into the market which could be a major factor in revitalizing neighborhoods.

Given the onerous present rent burdens of low- and moderate-income tenants, they would bitterly resent and would resist any programs which would cause further rent increases or dislocate present tenants. Accordingly, rent increases, as a consequence of the improvement program, would not be permitted by S. 971 and the FHA would monitor rent levels, in the same manner as it now does for other assisted housing. The nature of the program would be such as to minimize relocation requirements.

Finally, and of great importance, S. 971 would provide many employment opportunities for low-income area residents and contract opportunities for minority businesses. Since home repair and improvement is not a field dominated by strong construction unions, and since many of the jobs to be created would not require highly skilled workmen, this employment potential could be realized by local residents.

A full description of our center's thinking on the usefulness of refinancing and on means of dealing with the

problem situations that might arise was published in the May 1971 issue of the George Washington Law Review. I would like to submit a copy of that article for the record. Also, we have prepared a memorandum pointing up a number of technical, although important, problems raised by Title I of S. 971, as presently drafted, which I would like to submit.

The final area I will discuss has to do with the specific problem of housing abandonments and the general situation of what might be called "disaster areas", areas where buildings are being abandoned by their owners in large numbers and where a process of economic and social disintegration is far along.

These areas are not the primary focus of S. 971, although they contain many buildings which could be preserved by moderate rehabilitation financed under Title I, and in our technical comments we urge that the benefits of that program not be denied in appropriate cases. In these areas the re-financing approach is plainly not strong enough medicine. Disaster areas should be distinguished from what might be called "transitional areas", with which Title I is primarily concerned. In transitional areas, one or two buildings or an occasional block may be abandoned, a process of ethnic or racial transformation may be ongoing, so that landlords, of an ethnic or racial group previously resident in the area, find themselves increasingly in conflict with tenants of different ethnic or racial background. Faced with such

conflict and with diminished cash flows caused by rising costs, landlords tend to systematically undermaintain their properties.

Transitional and disaster neighborhoods can be viewed as two points on a spectrum of housing deterioration, separated only by time and the degree of neighborhood decline. In the transitional area each abandonment brings the neighborhood that much closer to the tipping point with the expectations of owners and residents so diminished that mass exodus can occur.

In both neighborhoods the costs associated with building abandonment are exorbitant. Recent figures have reported that 50% of all structural fires in the borough of Brooklyn and 20% of the structural fires in Boston are occurring in abandoned buildings. Once abandoned, they are cannibalized within a matter of days by professional thieves, heroin addicts and the poverty stricken, who resell the plumbing, heating and electrical fixtures for whatever price they will bring. Abandoned buildings typically become gathering places for heroin addicts, prostitutes, alcoholics, vagrants and neighborhood gangs. The building shell often becomes a garbage depot, increasing the risk of fire and attracting insects and rodents.

The abandonment process also involves high opportunity costs. Thus, the general decline in the population of the central cities during the sixties has increased vacancy rates

in the private rental market and this may be expected to continue. Government thus has the opportunity to improve the housing conditions for families of low income, at very little cost, through the utilization and improvement of the existing stock and, at the same time, to foster the strategic removal of the lowest quality units. Present code enforcement and municipal takeover programs, including receiverships, proceedings in rem under the tax power, and condemnation of buildings under health codes, and code enforcement programs have been inadequate in scope and effectiveness to deal with the situation or to take advantage of the opportunities it offers.

What is urgently needed is an effective quick-take mechanism, geared to an early warning system, which could facilitate acquisition of abandoned housing, or housing which is threatened by abandonment. Buildings so acquired could then be rehabilitated and used, if appropriate, or if not, could be boarded up and security could be maintained against fire and intrusion by trespassers, rodents and vermin, pending demolition, so that they would not victimize the neighborhood.

The Public Housing Authorities are the optimum agencies to perform this interception function. They already exist and have experience in managing low income housing. They have, or could be provided, access to rehabilitation money. Public Housing is a relatively deep subsidy program and,

under the several turnkey variations, has a high degree of financial and managerial flexibility. Much fuller advantage must be taken of its potentials as an instrumentality which could intervene quickly and effectively in the inner city to prevent abandonments.

More generally, if the purpose of S. 971 to encourage the preservation of existing houses and neighborhoods inhabited by lower income people, is to be achieved, the application of a variety of legal and financial mechanisms will be needed. Substantial rehabilitation and new construction, in appropriate circumstances, will be called for and integrated into neighborhood community improvement plans. Local housing authorities are uniquely situated to acquire, lease, manage, hold or otherwise intervene in the housing market and, by virtue of the deep subsidy of the public housing program, to channel funds needed for substantial intervention. We urge that high priority should be given to the provision of legal mechanisms necessary to reorient the public housing program to those ends.

In summary, we believe the programs proposed by S. 971 could provide substantial improvement in the living conditions of many Americans who will otherwise continue to live in substandard housing for many years. They could do much to stem the tide of rapid deterioration now threatening the most valuable of all housing resources, the existing stock. They would put landlords in a position to respond in a

constructive manner to reasonable tenant demands for improved housing, as required by emerging legal doctrines. Taken together with new provisions for the utilization of public housing actions along the lines suggested, they could provide, most importantly, an opportunity to demonstrate that the country is capable of providing direct, meaningful immediate and effective support and relief at a time when action is desperately needed.

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Comments on S. 971, 93rd Congress, 1st Session,
 to Accompany Statement of Kenneth F. Phillips

July 27, 1973

The National Housing and Economic Development Law Project strongly supports S. 971. As the accompanying testimony makes clear, we believe that it represents a realistic approach to the critical need for broadscale federal intervention in the inner city housing market in order to facilitate the preservation and improvement of existing units.

It would provide the means for early and broad relief, through moderate rehabilitation, in the current critical problem area of substandard and deteriorating housing. In recent years vast sections of inner-city housing, and many rural and suburban housing units, have deteriorated below minimum levels of human habitability, as that concept is embodied in local and state health and safety codes, and an alarming number of these deteriorated but structurally sound units have been abandoned by their owners. Projecting both population growth and realistic housing production estimates, it is clear that

most of these substandard and deteriorating units will continue to be the only homes available for millions of low- and moderate-income families and individuals for ten, fifteen or more years. This new program would offer interim relief by generating the private capital necessary for basic housing repairs and improvements, by facilitating transfer of ownership to owner occupants, condominiums, cooperatives and nonprofit organizations and by reducing the high cost of financing repairs and improvements in areas where institutional lending is not available.

The key to the Title I program is to make FHA repayment guarantees, which have historically been available for moderate and middle-income suburban housing, also available for low- and moderate-income housing in all areas, urban, suburban and rural. Such FHA guarantees could overcome the present long-standing unwillingness of private lending institutions to provide refinancing and improvement loans at market interest rates. They require no significant federal expenditures or local governmental actions and could, accordingly, be made widely available within the immediate future. While efforts should be made under the program, by the Secretary and by local officials, to rehabilitate entire neighborhoods, neighborhood improvement programs are not a precondition to mortgage guarantees. Such a condition is appropriate where, as in the Federally Assisted Code Enforcement program, limited federal subsidies are sought to be allocated on a maximum return basis. This

program, however, seeks only to make financing available at a non-subsidized market rate and wherever it is needed to upgrade substandard or low- or moderate-income housing. To limit its outreach to laboriously designated special areas would effectively deny its benefits to most of those in greatest need of assistance.

The comments in this memorandum are intended to pinpoint certain technical problems for consideration by the subcommittee in its further development of the approach represented by S. 971. In the main, they are limited to Title I of that bill.

1. Section 2.(b) and subsection 244(d)(2) would limit the applicability of Title I, and in the former case of all of the programs of S. 971, to certain described neighborhoods. The reasons underlying this limitation are evident. There are, nevertheless, a great many units currently existing in neighborhoods which will not meet these requirements that could be preserved without substantial costs by the mechanisms the bill will provide. Thus, a moderate rehabilitation program developed by the Legal Aid Society is presently operating effectively in the South Bronx and similar programs have been developed under model cities in many places. (These are described in HUD Notice CD 73-4, dated April 25, 1973 and entitled "Examples of Local and State Financing of Property Rehabilitation.") If not preserved, it may be expected that they will continue to deteriorate and, ultimately, may be

abandoned. Their preservation and upgrading, in conjunction with other efforts of neighborhood improvement under such programs as model cities, would contribute significantly toward the restoration of these areas to viability and would provide better housing at an early date for people who live there. By so doing it could be expected to counteract the exodus from these areas and thereby protect transitional areas nearby. Finally, it would provide jobs for neighborhood residents. Accordingly, we urge that the S. 971 programs be available in all cases where buildings will continue to be lived in and where preservation and upgrading represents a viable approach.

2. Proposed Section 244(c)(2) requires that to be "in sound condition," a unit must meet all local housing code requirements. It would be well to emphasize in the Committee's report that, as incorporated by subsection (e), the bill's definition of "sound condition" authorizes and directs FHA to accept compliance with approved local housing codes, as certified by local officials, subject to limited FHA inspections, as satisfactory and sufficient evidence of the quality of the improved units. This approach is consistent with the bill's emphasis on re-establishing local government responsibility over local matters, i.e., here the level of improvement of a particular unit. It would, realistically, recognize that the purpose of this program would be, not the creation of ideal housing units, but to bring otherwise substandard

or deteriorating units up to a level of habitability established by local code standards. That standard was recognized and imposed by the United States Court of Appeals for the District of Columbia in the case of Javins v. First National Realty Corporation, 428 F.2d 1971, (D.C. Cir. 1970), cert. den. 400 U.S. 925 (1970), in finding implied warranties of habitability on the part of landlords and has been incorporated by the Commissioners on Uniform State Law in their Model Residential Landlord-Tenant Code. By setting rehabilitation standards too high, the program could effectively exclude any possibility of broad scale application.

The bill's definition, by its reference to applicable state and local codes and other laws, recognizes the primary responsibility of state and local governments for the establishment of housing standards. The program would assist localities in achieving standards that they have established. It avoids imposing a new, possibly unrealistically high, federal rehabilitation standard, such as those which, in present rehabilitation programs, have severely limited the feasibility of broad-scale utilization. Where, however, no local codes or ordinances exist or where existing codes are inadequate, the Secretary is authorized to impose appropriate standards.

While proposed Section 244(g) anticipates efforts by the Secretary to encourage local government to administer

laws and ordinances, including housing codes, in a manner which will encourage maximum utilization of the program, the absence in Section 244(c)(2) of any provision anticipating or requiring the waiver of unreasonable requirements, such as exist in many housing codes, may be read to exclude waivers. The definition should be amended to exclude such requirements as may be waived or the point should be adequately covered in the Committee's report to be sure that an unduly rigid view of the requirements of that definition will not be adopted.

3. Proposed Section 244(d)(3) could create serious difficulties in the administration of the program. Thus it could be construed to make the program unavailable in any case where there is no existing mortgage on the property. On the other hand, nothing in S. 971 would appear to preclude an existing owner from mortgaging his property in whatever market for mortgages may exist immediately before making application for refinancing. If that pattern of action would be allowable, there should be no reason to require landlords to go through the exercise of first securing an interim mortgage.

Additionally, Section 244(d)(3) would make it impossible for a nonprofit or cooperative to take over a building from its existing landlord unless the latter's present mortgage was virtually equal to the value of the property. Such acquisition is clearly intended by the clause beginning at line 15 of page 6 with the words "except that in the case

of refinancing." The existing mortgage would rarely be large enough to permit a cooperative or nonprofit to take advantage of the favorable equity debt provisions of the language just cited. They would, thereby, be effectively excluded from participation in the program. Such a result would seriously impair the usefulness of Title I.

The provisions of the proviso beginning at line 24 on page 5 and running through line 17 of page 6, which is based upon debt-equity ratios, is substantially duplicatory of proposed Section 244(d)(3) and provides the necessary protection of equity to value ratios. The present formulation of Section 244(d)(3) would create a situation where landlords had to obtain mortgaging in present markets as the prior condition to utilization of the program, might preclude the participation of cooperatives and nonprofits, and is, in any event, unnecessarily duplicatory.

4. It is central to the entire purpose of the program that the mortgage funds made available under the program be used to preserve and upgrade housing and not be diverted to the mortgagor's personal use or profit. In particular, it is important that the program not be allowed to become a landlord's bail-out by reducing monthly debt services payments to increase profits. In this regard, the provisions of proposed Section 244(e)(1) should be tightened, first of all, so as to require that all repairs and improvements necessary to place the property in sound condition will be made. Secondly, it would be of great value to require

further that, even in the balloon situation, the entire proceeds of any insured loan may be used only for repairs and improvements and the other purposes referred to in paragraphs (A), (B) and (C) on page 6. The effect of so requiring would be to channel the proceeds either into repairs and improvements above and beyond those required by code or to keep down the loan amount and thereby keep down pressures to increase rent by reason of high debt service. It would prevent bail-out. This should be true, in our view, even in cases where a balloon payment provision is involved. It would be useful also to provide that the Secretary shall ensure that no portion of the principal obligation of any mortgage insured under this section shall be used for any purpose other than those specified in subparagraphs (A), (B) and (C) on page 6.

5. The apparent purpose of proposed Section 244(e)(3) is to require the Secretary to prescribe effective safeguards against abuse of the program by speculators such as has occurred in the administration of FHA existing housing programs in several cities. These abuses have been the subject of extensive investigation by HUD and others which have pinpointed the deficiencies that gave rise to the abuses. The three-year ownership requirement should be helpful but the provision might well be expanded to call upon the Secretary to take such precautions as may be deemed appropriate with respect to limiting participation in the program by speculators, having due regard to the intent of this legislation

to expand the availability of mortgage insurance in eligible areas.

6. Proposed Section 244(e)(5)(B) limits rent increases to those necessary to offset actual and reasonable operating expenses. For reasons stated in the accompanying testimony this is an important limitation.

The intended beneficiaries of the mortgage insurance benefits of the program are the low- and moderate-income tenants or eligible homeowners living in the housing to be improved. Tenants living in such housing commonly pay an onerously large amount of their income for housing. They would bitterly resent and will resist any program which would cause rent increases. Pursuant to this subsection, each mortgagor should be required to certify that rental increases in the year prior to his participation in the program were not in anticipation of the program benefits but instead were necessary to offset reasonable and actual operating cost increases. This certification should be made when the application for an insured mortgage is submitted to the lender. In addition, no increases in rentals should be allowed during the term of the mortgage without the prior consent of the Secretary, who will allow such increases only on the basis of reasonable and actual increases in operating expenses. In the event an emergency loan has been granted under other provisions of S. 971, the rents should be increased to pay the debt service on such loan. To ensure that these restrictions will be administered rigorously and on the basis of full knowledge of the

relevant facts, provision has been made for notice to the tenants and an opportunity for them to be heard. These basic control mechanisms are modeled after, but improve upon, those currently operating in FHA multi-family projects. See the George Washington Law Review article referred to below at pages 849-853.

In many cities most of the units capable of benefiting from the program are in buildings containing one to four dwelling units. As this provision is not made applicable to these buildings, there will be no effective limitation upon rent increases. We would strongly urge that this provision be extended to apply regardless of the number of units in a given building. The importance of a control in this area to the acceptability and general utility of the program is such that the additional administrative costs involved should be incurred.

7. Finally, as regards the text of S. 971, we would like to acknowledge and emphasize the importance of proposed subsection (h). Knowledge of the various factors, financial, cost, and general economic, that underlie the private housing market, does not presently exist in the scope and detail needed to optimize governmental interventions. The continuing feedback mechanism that this subsection calls for should prove enormously valuable, both in periodically reshaping the programs to be established under S. 971, and in providing the statistical foundations for future housing policies and programs better geared to social needs than have been those of the past.

8. As pointed out in the George Washington Law Review article referred to below (see page 840), pressure for the utilization of the new refinancing program to achieve broad improvements must necessarily come largely from tenants and tenant or neighborhood organizations. Accordingly, provision in the legislation for small grants to tenant or neighborhood organizations to enable them to obtain necessary technical assistance in order to ensure utilization of the program would greatly increase the prospects for its widescale utilization.

9. There is a critical need, particularly in areas where abandonment is occurring or is threatened, for a quick-take mechanism involving the public housing authority and for a better integration of the public housing program into the process of neighborhood preservation and upgrading. These matters are briefly discussed in the accompanying statement. Given the purposes of S. 971, it would be appropriate for a further title to be added along the lines suggested, addressed to those objectives.

10. We would urge that a provision be added to direct the Secretary to take all feasible steps to maximize the training and employment opportunity potentials of the program. The repairs and improvements financed under the program will, necessarily, be performed in neighborhoods where low income people reside. Many of the jobs created will not require highly skilled workmen; for those jobs that do, federally-financed training programs could be made available. Since

home repair and improvement work is not a field dominated by strong construction unions, union-created barriers to expanded job opportunities should be less of an obstacle than in new construction or standard rehabilitation. Finally, individual contracts would be on a small enough scale to permit participation by many minority contractors who have neither the resources nor the bonding capacity to undertake large construction. The program would thus avoid serious difficulties that have limited the participation of minority contractors in other federal housing and development programs.

Such a provision might read as follows: "In order to maximize compliance with the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, the Secretary, in cooperation with the Secretary of Labor and the Secretary of Health, Education and Welfare, shall ensure that, to the greatest extent feasible, funds appropriated under the Manpower Development and Training Act of 1962, as amended, shall be made available on a priority basis for training and employment support use in connection with improvements financed by mortgages insured under this section."

11. Finally, the interim relief character of the proposed refinancing program must be emphasized and clearly understood. The proposal in no way substitutes for the more liberalized support of the §236 or §312 rehabilitation programs. Those programs should be used for gut rehabilitation of vacant or partly vacant housing units. Similarly, it must be recognized that

mere housing rehabilitation, whether or not deeply subsidized, cannot alone redress the ills of ghetto crisis areas. With the modifications proposed, however, the refinancing mechanism could be used on a broad scale to relieve the problems of inner city housing deterioration, which the Committee has rightly recognized as critical, and could provide important employment opportunities.

A more complete statement of the utility of the refinancing approach appears in Phillips and Bryson, "Refinancing: A First Step Toward a Realistic Housing Program for the Poor," 39 George Washington Law Review 835, 1971.

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January 17, 1971

The Operation of the Program in Various Financial Situations

Upon implementation of the proposed new refinancing program, numerous differing financing situations will be encountered and it is, therefore, useful to consider how the program will operate in each of them. In descending order of program feasibility, they are 1) short term, high interest loans; 2) short term, high effective, but low contract, interest rates; 3) short term, but low actual interest rates; 4) long term, reasonable interest rates; 5) balloon mortgages; and 6) mortgages in default upon which only interest payments are being made.

In analyzing these situations, certain general factors must be kept in mind. The basic principle is that financing or refinancing made available on better terms because of the FHA guarantee enables an owner to support a larger principal with the same monthly payments. The difference between the old and new principals must be used for needed repairs and improvements. Beyond this basic principle there are six other refinements. First, as the principal on the existing loans increases, the amount of repair and improvement money that can be made available by refinancing will also increase. Second, the higher the present interest rate on the current debt, the greater will be the amount of repair and improvement money made available on refinancing. Third, as the term of the existing debt increases, the amount of repair and improvement money made available decreases. Fourth, the longer the new term after refinancing, the more repair and improvement money will be made available. Fifth, allowance must be made for points that the lenders may charge. Thus it is assumed in the following discussion that a 5% discount will be charged. Sixth, beyond the benefits secured from the better terms, additional money for repairs and improvements may be obtained, if the refinancing occurs in the latter years of a mortgage and thus a substantial portion of the original principal has been paid off.

Short term - High interest rates

If the old loan was for a short term and at a high interest rate, the greatest benefits from refinancing can be secured. The following

tables indicate how refinancing such short term high interest rate loans will operate when the old interest rates, principals and amortization periods and new amortization periods vary.

Table A - Various Principals

This table shows the amount of repair and improvement money made available by refinancing five year, fifteen percent interest loans of varying principals, if the payments on the new loan are the same, the term of the new loan is fifteen years, the interest rate is 7.0%, and 5% discount is charged.

<u>Principal</u>	<u>Payments</u>	<u>New Principal</u>	<u>Repair and Improvement Money</u>	<u>5% Discount</u>
\$1000	\$ 25.00	\$ 2780.00	\$1640.00	\$140.00
2000	50.00	5560.00	3282.00	278.00
3000	75.00	8340.00	4923.00	417.00
4000	100.00	11125.00	6569.00	556.00
5000	125.00	13905.00	8210.00	695.00

Table B - Various Interest Rates

This table shows the amounts of repair and improvement money made available by refinancing five year, three thousand dollar loans of various interests rates for fifteen years at 7.0% interest with a 5% discount.

<u>Interest Rate</u>	<u>Payments</u>	<u>New Principal</u>	<u>Repair & Improvement Money</u>	<u>5% Discount</u>
10%	\$66.00	\$7341.00	\$3974.00	\$367.00
12	69.00	7615.00	4235.00	380.00
15	75.00	8342.00	4925.00	417.00
18	80.00	8900.00	5455.00	445.00
20	84.00	9345.00	5828.00	467.00
23	89.00	9900.00	6405.00	495.00

Table C - Various Old Amortization Periods

This table shows the amount of repair and improvement money made available by refinancing fifteen percent, three thousand dollar loans of various terms for a fifteen year period at 7.0% interest with a 5% discount.

<u>Term</u>	<u>Payments</u>	<u>New Principal</u>	<u>Repair & Improvement Money</u>	<u>5% Discount</u>
3 yr.	\$109.47	\$12125.00	\$8519.00	\$606.00
4	88.00	9790.00	6301.00	489.00
5	75.00	8340.00	4923.00	417.00
6	66.00	7341.00	3974.00	367.00
7	60.00	6774.00	3341.00	341.00

Table D - Various New Amortization Periods

This table shows the amount of repair and improvement money made available by refinancing a five year, fifteen percent, three thousand dollar loan for various terms at 7.0% interest with a 5% discount.

<u>New Term</u>	<u>Payment</u>	<u>Principal</u>	<u>Repair & Improvement Money</u>	<u>5% Discount</u>
8 yr.	\$75.00	\$5500.00	\$2225.00	\$275.00
9	75.00	5995.00	2695.00	300.00
10	75.00	6455.00	3132.00	322.00
11	75.00	6885.00	3541.00	344.00
12	75.00	7290.00	3925.00	365.00
13	75.00	7660.00	4277.00	383.00
14	75.00	8015.00	4615.00	400.00
15	75.00	8340.00	4923.00	417.00

Short term - high effective interest rate

The existing financing may carry a reasonable interest rate on the face of the loan but the transaction may have involved hidden financing charges in the form of either discounts or inflated purchase prices. It is contemplated that upon refinancing, the mortgagor, in order to recoup part of the hidden finance charges, will attempt to persuade the previous lender to accept, as repayment, an amount less than the face amount of the existing indebtedness. See subsection 244(d)(3) and the discussion of this point in the annotations to that subsection. The following table shows the operation of the refinancing mechanism when five year, seven percent, three thousand dollar loans involving discounts of ten to twenty-five percent are refinanced for fifteen years at seven percent interest, with a discount of 5%, and repayment of the debt is reduced by the amount of the original discount.

Table E - Hidden Financing Charges

<u>Previous Discount</u>	<u>Payments</u>	<u>New Principal</u>	<u>Amount of Debt Repaid</u>	<u>New Discount</u>	<u>Repair & Improvement Money</u>
10%	\$60.00	\$8000.00	\$2700.00	\$400.00	\$4900.00
15%	60.00	8000.00	2550.00	400.00	5050.00
20%	60.00	8000.00	2400.00	400.00	5200.00
25%	60.00	8000.00	2250.00	400.00	5350.00

It may not be possible to recoup all of the hidden finance charge. Table F indicates the amount by which the repair and improvement moneys would be reduced in situations identical to those in Table E, with the one exception that either 30% or 60%, instead of 100%, of the hidden charge is recouped.

Table F

<u>Previous Discount</u>	<u>Amount of Discount Recouped</u>	<u>Repair & Improvement Money</u>
10%	30%	\$4700.00 (-\$200)
10	60	4800.00 (-\$1100)
15	30	4750.00 (-\$300)
15	60	4900.00 (-\$150)
20	30	4800.00 (-\$400)
20	60	5000.00 (-\$200)
25	30	4850.00 (-\$500)
25	60	5100.00 (-\$250)

Short term - reasonable actual interest rate

Even short term loans with reasonable contract interest rates that do not involve hidden finance charges will provide sufficient repair and improvement moneys when refinanced under the proposed program. Thus the following table shows the amounts of repair and improvement money made available by refinancing five year, seven percent loans of varying principals for fifteen years at seven percent interest with a five percent discount.

Table G

<u>Old Principal</u>	<u>Payments</u>	<u>New Principal</u>	<u>5% Discount</u>	<u>Repair & Improvement Money</u>
\$1000	\$20.00	\$2225.00	\$111.00	\$1114.00
2000	40.00	4450.00	222.00	2228.00
3000	60.00	6675.00	334.00	3341.00
4000	80.00	8900.00	445.00	4455.00
5000	100.00	11115.00	558.00	5557.00
6000	120.00	13350.00	668.00	6682.00

Long term - low interest rates

The loan to be refinanced may have been a long term, low interest rate loan, obtained at a time when the surrounding neighborhood was acceptable to institutional lenders. If the neighborhood has changed sufficiently to make institutional lenders unwilling to offer new financing to a property owner in this situation, without the protection of government mortgage insurance, the proposed program can help property owners secure needed repair and improvement money. Two factors will influence the amount of money which will be made available. The first will be the number of years for which the owner has been paying off the loan. As the end of the term of the original loan nears, more of its principal will have been paid off and thus more money is available for repairs and improvements. The second will be the size of the monthly

payments on the existing loan, which, of course, will vary depending upon the original principal of that loan. Tables H and I reflect these two factors.

Table H

This table shows the amount of repair and improvement money made available when a \$15,000, twenty year, 5% loan is refinanced at various stages of the amortization process, for ten years, at 7% interest, with a 5% discount.

<u>Payments</u>	<u>Year of Refinancing</u>	<u>Outstanding Balance</u>	<u>New Principal</u>	<u>5% Discount</u>	<u>Repair & Improvement Money</u>
\$99.00	5th	\$13770.00	\$8520.00	\$426.00	- \$5676.00*
99.00	10	9330.00	8520.00	426.00	- 1236.00*
99.00	13	7005.00	8520.00	426.00	1089.00
99.00	15	5250.00	8520.00	426.00	2844.00
99.00	17	3300.00	8520.00	426.00	4794.00
99.00	18	2250.00	8520.00	426.00	5844.00

* Not feasible.

Table I

This table shows the amount of repair and improvement money made available by refinancing in the 17th year of amortization, of twenty year, 5% loans of various principals, for new terms of 10 years, at 7% interest with 5% discount.

<u>Old Principal</u>	<u>Payments</u>	<u>Outstanding Balance</u>	<u>New Principal</u>	<u>5% Discount</u>	<u>Repair & Improvement Money</u>
\$20,000.00	\$132.00	\$4400.00	\$11,360.00	\$568.00	\$6392.00
17,500.00	115.00	3850.00	9895.00	495.00	5550.00
15,000.00	99.00	3300.00	8520.00	426.00	4794.00
12,500.00	82.00	2750.00	7055.00	353.00	3952.00
10,000.00	66.00	2200.00	5680.00	284.00	3196.00

The above tables assume that the term of the new loan will be ten years. Of course, if sufficient repair and improvement money is not made available with a ten year refinancing, one alternative would be to use a longer term if it appears that the property will be lived in for that longer time period. At the same time, if all of the money for repairs and improvements made available by a ten year term is not needed, then the new term can be shortened.

Balloon mortgages

Mortgage instruments which do not provide for the complete amortization of the principal amount over the mortgage term are known as balloon mortgages, and the amount outstanding, as the balloon payment.

The feasibility of refinancing these mortgages depends largely on the size of the balloon payment relative to the amount of original indebtedness secured. If the size of the balloon payment is less than 50% of this amount then refinancing will almost always be feasible and in the mortgagor's interest, especially if the original term and interest rate are unfavorable as compared with those available under the program. However, if the balloon exceeds 50% of the principal amount and if the term is approximately equal to the term available under the program then refinancing under this program will not be helpful.

Default situations

If the mortgagor is currently in default and only making interest payments on the loan, refinancing under the proposed program is only likely to be helpful if the interest rate on the original loan is very high. In addition, to the extent that mortgagors are able to renegotiate the amount to be repaid on existing debts, the program will be feasible in more cases.

Table J

This table shows the operation of the program when \$10,000, ten year loans, at varying interest rates, upon which the mortgagor stopped making principal payments in the eighth year are refinanced for 15 years, at 7% interest with a 5% discount. The payments on the new loan equal the interest payments being made on the outstanding balance at the beginning of the eighth year.

<u>Interest Rate</u>	<u>Outstanding Balance</u>	<u>Payments</u>	<u>New Principal</u>	<u>5% Discount</u>	<u>Repair and Improvement Money</u>
6%	\$3640.00	\$18.00	\$2000.00	\$100.00	*
8.5	3829.00	27.00	3000.00	150.00	*
10	4047.00	33.75	3755.00	188.00	*
12	4250.00	42.50	4725.00	236.00	\$ 239.00
15	4549.00	57.00	6340.00	317.00	1474.00

* Not feasible.

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 July 19, 1973

INFORMATION ON COSTS OF REPAIRS,
 RECONDITIONING AND MODERATE REHABILITATION

Under the proposed S. 971, Sec. 244 mortgage insurance program, capital varying in amount up to several thousand dollars, depending on the property's current debt structure, will be available through refinancing. (See Phillips and Bryson, "Refinancing: A First Step Toward a Realistic Housing Program for the Poor," 39 Geo. Wash. L. Rev., pp. 841-845 (May, 1971)). One condition of eligibility for an insured mortgage under this section is that all outstanding code violations can be removed within the monies made available (cf. Section 244(e)(1)).

The success of refinancing therefore depends on whether the money generated will be sufficient to significantly improve the physical condition of substandard low and moderate income housing and on whether local housing codes are of any value as a standard for improvement. In response to the latter issue it is important to note that although local codes are preferred as the standard for improvement the Secretary might require more exacting standards where local codes are inadequate. (See 22(c)(2)) In addition, improvements under the program are not limited by local codes but

* The research for this memorandum was done in 1971 and it does not take account of studies published since that time. Important further support for the propositions offered herein and in the accompanying statement may be found in Sternleib, "The Urban Housing Dilemma, The Dynamics of New York City's Rent Controlled Housing", preliminary draft, New York City, 1971.

by the amount of money made available through the refinancing mechanism.

A number of recent studies on the costs associated with improving housing through less than substantial rehabilitation support our conclusion that a significant impact can be made on the physical condition of substandard low and moderate income housing with the funds generated through refinancing. In addition the Grigsby (5 below) and New City Housing and Development Administration Studies (8 below) indicate the widespread need for a reconditioning and moderate rehabilitation program. A summary of the eight most recent studies available on the cost of moderate repairs follows.

1. THE ABELES-SCHWARTZ PROPOSAL OF DECEMBER 1969

Work to be done

No structural changes or room rearrangement would be made. The mechanicals would be repaired but not replaced. The exterior walls, roof and fire escape would be repaired and repainted but not replaced. New windows would be included. New kitchen and plumbing fixtures would be included. The interior walls, ceiling and floors would be patched and repainted as needed. There would be a thorough cleanup.

Cost

One could generalize from the costs included in the proposal that the rehabilitation expenditures would run from \$3,000 to \$4,000 a unit.

Date

The figures essentially are late 1966 figures with a certain allowance for inflation.

2. THE ABELES-SCHWARTZ FIGURES FROM 1970

Work to be done

The Abeles 1970 figures are divided into three categories - gut job rehabilitation, restoration and deferred maintenance. The last

two might in different cases fit within the reconditioning concept. Under the deferred maintenance approach, the following work would be done. No structural or room rearrangement work; very limited repairs on the mechanicals. The interior walls, ceiling and floors would be patched, repaired and painted. Some new windows and doors would be included but most would be repaired. The bathroom and kitchen fixtures would be repaired. The roof and drainage system would be repaired but no work would be done on the exterior walls. The fire escape would be repaired. There would be a thorough cleanup.

Cost

The average cost per unit is approximately \$1500 for the deferred maintenance.

Date

These figures are based on 1968/69 rehab figures.

3. SAN FRANCISCO'S CODE ENFORCEMENT FEASIBILITY STUDY FOR ALAMO SQUARE

The type of work done

This study contemplates that the only repairs made would be of code violations existing in the building. An analysis of the violations which appear most often indicates that the repair would include no structural changes, repair but not replacement of the mechanical systems, repair and repainting of the walls, ceilings and floors, repairs of the windows and doors, repairs and replacement of some kitchen and bathroom facilities, painting and repair of the exterior walls but little work on the roofs, steps to fire-

proof the building, and extensive cleanup.

Cost

The cost per unit to make the code compliance repairs averaged \$1,070 and the range was from \$300 to \$3,333.

Date

This code enforcement study was done in May of 1968.

4. ROGER MONTGOMERY'S STUDENTS' STUDY OF REHABILITATION COSTS IN THE SAN FRANCISCO
BAY AREA

The most significant finding made by the students was that the cost of rehabilitation in the federally-assisted urban renewal areas would run five to ten times the cost of bringing up the dwellings to local code standards under the FACE programs. This seems to reflect the different condition of the buildings in the two types of areas and the different goals of the two programs. The rehabilitation cost per unit in the FACE area were approximately \$1,000 and the rehabilitation costs in the urban renewal areas ranged from \$10,000 to \$20,000. The study was done in 1970, but the figures are for work done between 1965 and 1970.

5. THE GRIGSBY STUDY

In Grigsby's summary of his findings he indicates that Baltimore's substandard housing stock, which is in relatively good condition, could be upgraded to a quality standard somewhat above the housing code for an average cost of only \$2,000 per unit, excluding overhead and profit. He states that 8,000 units would have to be replaced or completely gutted and rebuilt at an average cost of about \$17,000, and that \$45 million could be used to paint and fix up 47,000 units and to modestly

rehabilitate 20,000 units. Although it is not possible to determine the exact cost per unit of the moderate rehabilitation, it would be less than the overall \$2,000 per unit required to bring all the substandard units in Baltimore up to the acceptable quality standard.

6. THE MCKINSEY STUDY OF FINANCING REHABILITATION IN NEW YORK CITY

Work done

The McKinsey study divided rehabilitation work into minimum rehabilitation, moderate rehabilitation, layout change rehabilitation, and extensive gut rehabilitation. The minimum rehabilitation involved repair and replacement of some major mechanicals, selective replacement of accessories, repairs to building structure and carpentry as necessary, cleaning, patching and painting and adding amenities if possible.

Cost

The costs vary depending upon the type of building and the level of rehabilitation. For minimum rehabilitation, Old Law tenements averaged \$1200 with a range from \$200 to \$5,000; New Law tenements averaged \$1000 and ranged from \$200 to \$2,000; brownstones averaged \$4,500 with a range from \$1,000 to \$6,000.

Type of Work - Moderate Rehabilitation

Moderate rehabilitation includes major repair or replacement of the mechanicals, major replacement of accessories, repair or replacement of carpentry items, as necessary, cleaning, patching and painting and some amenities.

Costs for Moderate Rehabilitation

The only costs available for moderate rehabilitation involved brownstones which averaged \$7,500 per unit and ranged from \$6,500 to \$8,500.

7. BOSTON MUNICIPAL RESEARCH BUREAU STUDY OF THE COSTS AND OTHER EFFECTS ON TENANTS OF REPAIRS REQUIRED UNDER HOUSING CODE ENFORCEMENT PROGRAMS, JULY 1968.

Chapter II of this study contains data on the cost of upgrading housing to code standards in various cities under the Community Renewal Program (CRP). The study contains the following caveat with respect to use of the cost data:

"[T]he available cost information for analysis is not only limited, but also so conditional by its nature as to be almost inapplicable for use other than in the following profile form."

Accordingly, the following excerpts from the text of Boston Municipal Research Bureau study are reprinted in their entirety.

Albany, New York
Urban Renewal Rehabilitation Report, 1964

Estimated rehabilitation costs ranged from \$280 to \$5,545 per property. The estimated average cost for most properties was \$2,400. The average cost per dwelling unit was estimated at \$700 for rehabilitation. A sample property with 3 dwelling units in need of rehabilitation had an estimated cost of \$280 per unit, which implied a total cost of \$840 for the units alone. Considering the property's pre-rehabilitation appraised value of \$9,100 and the post-rehabilitation value of \$10,800 the implication was that \$840 in repairs equaled \$1,700 in value.

Detroit, Michigan
"The New City", 1966

An examination of a project with 1,071 residential structures revealed that 809 needed repairs. The average structure was a small, frame, single-family dwelling over 40 years old with an estimated overage value of \$9,000. An average of \$363 was the estimated per

unit cost of repairs which involved gutters, downspouts and exterior surface protection.

Lynn, Massachusetts
Feasibility of Housing Rehabilitation 1968-1980

Lynn reported per unit repair costs averaged between \$1,500 and \$2,500. The repair costs were considered to be based on corrections that met modest living standards. Multi-dwelling structures were found to be in the poorest condition with 36% substandard in 1964. Although rents had remained stable over the 1960 to 1964 period, area family incomes had declined. It was estimated, however, that 50% of the residents would be able to afford rental increases. For every \$1,000 of repair costs an average rent increase of \$10 was estimated which implied rental increases of \$15 to \$25 per month for rehabilitation. The report noted, however, that the ability of owners to shift added repair costs to tenants was also governed by market conditions, tax policies and operating costs.

Miami, Florida
Neighborhood Rehabilitation Department, 1965

The report showed how dramatically substandard housing conditions had increased since the 1960 census. Deteriorated dwelling units in Miami were recorded at 13,539 in 1960. The figure rose to 21,287 in 1965. Repair costs for a sample Miami house in an advanced state of deterioration were estimated. The structure which required a new roof and extensive replastering could be rehabilitated at an estimated minimum cost of \$1,800 or \$1.70 per square foot. A cost of \$900 was estimated for repairs of liable structures in the early stages of deterioration. The average cost of both conditions came to \$1,350. It was projected that, if in 1966, 18,937 deteriorating units were

put into sound condition at an average cost of \$1,350 in Miami, the total cost would have been \$25,565,000.

New York City
Rehabilitation Report, 1963

The Department of City Planning estimated rehabilitation costs for two areas of New York City. The typical needed repairs involved the replacement of kitchen and bathroom fixtures, the restoration of floors, walls and ceilings, as well as the correction of poor wiring and heating conditions. In the Children's Museum Area where attached masonry brownstones predominated, rehabilitation costs were estimated at \$2,000 to \$2,500. In the Bronx Park West Area, rehabilitation of the average small masonry building was estimated to require a cost of \$3,000.

Newport, Rhode Island
Community Renewal Program, 1966

A survey of rehabilitation reported a range of repair costs from \$40 to \$2,840. The rehabilitation standards were based on FHA and city code minimums. Most of the structures were single-family or two-family. Exterior repair work involved porches, rails, stairs, gutters and painting. The interior repair work included window frame carpentry, plastering and painting. The median cost for improvements was \$975.

Waco, Texas
Preliminary Report, 1967

The report described the twelve code enforcement projects designated in the Community Renewal Program. These intensified code enforcement projects are scheduled for completion over a ten year period, in two

five year programs, with six projects each. The project areas are adjacent to the clearance and rehabilitation projects where blight is just beginning to appear. The vast majority of the project's structures were in need of minor repairs, such as roof shingles missing or bad porch and window conditions. The total of residential structures in the projects is 5,269. The estimated gross cost for the twelve intensified code enforcement projects was \$2,515,000 for rehabilitation grants for 1,679 families in the projects. The average grant for repairs was \$1,500.

8. NEW YORK CITY HOUSING AND DEVELOPMENT ADMINISTRATION, PROBLEM BUILDINGS EVALUATION AND TREATMENT STUDY.

This study conducted by the New York City Rand Institute for HDA in 1969 was based on a random sample of the city's 133,000 multiple dwellings. Estimates of the cost of correcting existing or incipient violations of the City's Housing Maintenance Code and estimates of the cost of moderate rehabilitation were prepared by experienced rehabilitation estimators on the 125 buildings sampled. Although the results of the study have not been published they are reported by Ira S. Lowry of the New York City Rand Institute in "Housing Allowances for Low-Income Urban Families: A Fresh Approach" printed in Papers Submitted to the Subcommittee on Housing Panels, part 21489 at 503 (1971). He reports:

The sample buildings in this class averaged 4.6 floors, 16.8 units, and 3.9 rooms per unit. Average assessed value per unit was \$3,600, implying an average market value of about \$5,300. Scheduled rent per unit averaged \$909 annually (\$76 monthly), slightly less than the average legal ceiling of \$950. The estimated cost of violation removal averaged only \$510 per unit; the estimated cost

of violation removal averaged only \$510 per unit; the estimated cost of moderate rehabilitation averaged \$3,100 per unit. (emphasis added)

Thus, there are literally hundreds of thousands of apartments in New York City that could be restored to decent conditions without large capital expenditures....

Refinancing: A First Step Toward a Realistic Housing Program for the Poor*

KENNETH F. PHILLIPS**

DAVID B. BRYSON***

The current marked increase in building abandonments¹ has caused national attention to focus again on the critical problem of substandard and deteriorating inner-city housing. Much of the housing for low and moderate income families in urban areas across the country is in intolerable condition: rat-infested, garbage-strewn buildings with broken stairs and handrails, non-functioning furnaces, hazardous wiring, and leaky roofs are commonplace. Moreover, many of the families compelled to live under these intolerable conditions are required to spend undue portions of their limited incomes for rent, causing unbalanced budgets and a lack of money for food, clothing, and other necessities of life. Considering our present housing shortage, projected population growth statistics, and realistic housing production expectations,² it seems clear that these dilapidated and unsafe inner-

* The research reported herein was performed pursuant to a grant from the Office of Economic Opportunity. The opinions expressed herein are those of the authors and should not be construed as representing the opinions or policy of any agency of the United States Government.

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1. In New York City alone, 38,000 units of the existing housing stock were abandoned each year from 1965-1967. Lowry, *I Rental Housing in New York City 6* (N.Y. City Rand Institute 1970). Senator Sparkman (D. Ala.) has more recently referred to an annual abandonment rate in New York City of 50,000 units. 38 HOUSING AND URBAN AFFAIRS DAILY 115 (Feb. 22, 1971).

2. See Grigsby, Stegman, Rosenberg & Leichtz, "Housing and Poverty" in Baltimore, Maryland, ch. I, at 1-3, June 1970 (prepared for Housing, Real Estate, and Urban Land Studies Program, Graduate School of Business Administration, Univ. of Calif., Los Angeles) [hereinafter cited as Grigsby].

city dwelling units will remain the only homes available for millions of low and moderate income families and individuals in the foreseeable future. Restoration and preservation of existing residential property is therefore essential.

That the persistent and accelerating process of housing deterioration has its roots in intransigent economic and social factors is now broadly recognized.³ All elements of housing costs, i.e., financing (despite modest recent reductions in some areas), maintenance, operating, and property taxes have been rising steadily for more than a decade. Financing costs in low income urban areas, long "red-lined" by conventional lending sources, are increased exorbitantly by inflated purchase prices and discounts of up to 25 percent.⁴ At the same time, increases in maintenance and operating costs resulting from the general pattern of inflation have produced tension and hostility between landlords and tenants. The landlord, caught between rising costs and his tenants' incapacity to pay higher rents, will frequently sharply reduce expenditures for operations, maintenance, and repairs. The inevitable result of each such reduction is deferral of maintenance leading rapidly to deterioration, squalor, and intolerable living conditions. In addition, this economic squeeze will result in the waste of thousands of dwelling units which are critically needed and expensive to replace.

While these facts are increasingly reflected in court decisions that impose strict liability requirements on landlords for the maintenance of minimum levels of habitability,⁵ their implications are not yet reflected in the housing programs of the federal government. The present announced goal of the Department of Housing and Urban Development (HUD) to stimulate production of new housing units, is primarily oriented toward the suburbs. While such new units are clearly needed, particularly in areas where the absence of low and moderate income housing has excluded the poor from employment opportunities, these federal programs offer little or no relief to the majority of families who will continue to live in their present urban locations.⁶ Given the relentless economic pressures already noted, it is clear that, absent major new federal initiatives, the housing in which these families will be living will continue to deteriorate.

If the statutory mandate to ensure every American family a decent home is to become a reality, a new, effective, and broad-scale pro-

3. See STERNLIEB, *THE TENEMENT LANDLORD* 76-97 (1966) [hereinafter cited as STERNLIEB]; Grigsby, ch. III, at 1-9, 21-30; Institute of Real Estate Management, 1970 Apartment Bldg. Income-Expense Analysis (1971).

4. Cf. STERNLIEB 114-18.

5. See, e.g., *Javins v. First Nat'l Realty Corp.*, 428 F.2d 1071 (D.C. Cir.), cert. denied, 400 U.S. 925 (1970); *Brown v. Southall Realty Co.*, 237 A.2d 834 (D.C. Ct. App. 1968); *Lemle v. Breeden*, 462 P.2d 470 (Hawaii 1969); *Reste Realty Corp. v. Cooper*, 53 N.J. 444, 251 A.2d 268 (1969); *Pines v. Persson*, 14 Wis. 2d 590, 111 N.W.2d 409 (1961); 39 GEO. WASH. L. REV. 152 (1970).

6. See National Housing Act §§ 221(d)(3), 235 & 236, 12 U.S.C. §§ 1715l(d)(3) (Supp. V, 1965-69), amending 12 U.S.C. § 1715l(d)(3) (1964), 1715z & 1715z-1 (Supp. V, 1965-69). All of the subsidy money for these programs, except for 30 percent of the section 235 funds, is restricted by statute for use with either newly-constructed or substantially rehabilitated units. The statutory allowance of 30 percent of the section 235 funds for existing units, 12 U.S.C. § 1715z

gram is needed to reverse the process of persistent deterioration in the existing low and moderate income housing sector. Such a program will have to provide the financial means for upgrading substandard, but reclaimable units. It will have to ensure that adequate revenues become available to cover operating expenses, including the costs of maintenance necessary to sustain the upgraded buildings in habitable condition. Finally, no household must be required to pay a greater percentage of its income to obtain decent housing than it can reasonably afford.

To achieve the two latter features, a program of government housing allowance subsidies will be required. The concept involved in such an approach has already been accepted in both the public housing programs and the FHA rent supplement program, in which no tenant may be charged rent in excess of 25 percent of his income.⁷ Alternatively or additionally, relief may be obtained by reducing the cost side of the equation through such devices as property tax relief or more efficient systems for building maintenance and operations. In appropriate instances, consolidation of property ownership, cooperatives, and increased home ownership could also lower costs.

The development and implementation of a comprehensive housing subsidy program along these lines will require time, study, and experimentation.⁸ The first major step toward such a program could, however, be taken now and at a minimum cost; that step would be new federal legislation designed to take full advantage of the financial leveraging power of the FHA guaranty mechanism in

(h) (3) (Supp. V, 1965-69), has been further limited by administrative action. See HUD News, No. 70-145 (March 10, 1970). The allocation of funds, even to substantial rehabilitation, has also been reduced by HUD. SECOND ANNUAL REPORT ON NATIONAL HOUSING GOALS, H.R. Doc. No. 292, 91st Cong., 2d Sess. 25 (1970). The Public Housing Programs also are predominantly for new construction. Housing Act of 1937 § 1, 42 U.S.C. § 1401 (Supp. V, 1965-69), amending 42 U.S.C. § 1401 (1964). It is, however, encouraging to note that a program reflecting many of the principles discussed in this article is included in the housing legislation recently proposed by the House Banking and Currency Committee. See H.R. 9688, 92d Cong., 1st Sess. § 203 (1971). The bill is the result of an extensive review of the federal housing programs and policies by the Subcommittee on Housing of the House Banking and Currency Committee, which culminated in a report that also acknowledges the importance of the principles discussed in this article. See SUBCOMM. ON HOUSING, HOUSE COMM. ON BANKING AND CURRENCY, 92d Cong., 1st Sess., HOUSING AND THE URBAN ENVIRONMENT 15-18 (Comm. Print 1971). Nonetheless, the program in the proposed legislation is unfortunately restricted by a requirement of owner occupancy which, in the authors' judgment, will severely and unnecessarily limit its effectiveness.

7. Housing and Urban Development Act of 1969 § 213(a), 42 U.S.C. § 1402(1) (Supp. V, 1965-69), amending 42 U.S.C. § 1402(1) (1964).

8. See sections 504 and 505 of the Housing and Urban Development Act of 1970, Pub. L. No. 91-609, 84 Stat. 1786-87, which authorized funds for an experimental housing allowance program and demonstrations with respect to abandoned properties. The National Housing and Economic Development Law Project is currently studying alternative mechanisms for the administration of housing allowances. The Project is located at the Earl Warren Legal Institute, University of California, Berkeley.

order to refinance existing housing indebtedness over longer term periods, so as to provide the necessary capital for basic housing repairs and improvements. This article explores the feasibility and general utility of such an approach.

The general impossibility of securing loans from institutional lenders for the purchase or renovation of inner-city low income housing has been widely acknowledged.⁹ This unavailability has created a pattern of short-term financing at very high interest rates and, consequently, relatively high monthly debt servicing costs. Resources needed for repairs, maintenance, and operations are absorbed by these high debt service payments.

If this pattern could be broken and replaced with FHA guaranteed long-term loans at prime interest rates, the net result would be an influx of private capital to finance modest, but critical repairs and improvements. Thus, a typical \$66 per month loan payment which is now required on a \$3,000, five year, 10 percent mortgage, would be able to support a principal of \$5,230 if the debt were refinanced with a term of ten years and at an interest rate of 8 1/2 percent. Thus \$2,230 could be made available for repairs and improvements of the housing unit without increasing monthly debt service payments. The property owner would be legally required to use the additional principal for that purpose. The longer term period would be based on projections as to the number of years for which the specific property will be lived in and therefore be rent producing and able to support a mortgage. The key to this plan would be FHA repayment guarantees to overcome the present long-standing unwillingness of private lending institutions to provide refinancing and improvement loans at low interest rates.

The additional capital of \$2,000 to \$5,000 per unit which might be made available by this technique would be sufficient to effect marked improvements with respect to habitability of the unit. Such improvements might include: repainting walls; refinishing or resurfacing floors; replacing broken window glass and repairing sashes; repairing and partially replacing wiring, heating, and plumbing systems; installing garbage chutes to avoid sanitation problems; correcting dangerous stairway conditions; providing good doors and strong locks needed for adequate security (a major concern in the areas involved); repairing or providing fire escapes; providing adequate interior lighting in common areas; repairing roofs, spouts, and gutters; exterior repainting; and thorough clean-up.

The proposed refinancing would maintain the property owner's current level of monthly debt service costs. Although he would pay debt service for a longer period of time, that apparent cost increase will be offset by an increase in the value of the property, lower maintenance costs, higher occupancy rates, better tenant relations, and

9. See NAT'L COMM'N ON URBAN PROBLEMS, *BUILDING THE AMERICAN CITY*, H.R. Doc. No. 34, 91st Cong., 1st Sess. 100-03 (1968); Grigsby, ch. III, at 50-57; RAPKIN, *THE REAL ESTATE MARKET IN AN URBAN RENEWAL AREA*, 44 (New York, New York City Planning Comm'n 1959); STERNLIEB 107-12.

tax benefits. Because of the present heavy rent burdens, low and moderate income tenants, bitterly resent and resist any program which causes further rent increases or dislocation. Since each landlord's participation in the program will be voluntary and since there will be no increase in his debt service payments, a binding commitment must, therefore, be required from each participating landlord, as a condition of the FHA guaranty, that he not increase rentals as a result of the upgrading.

The costs of the proposed program to the federal government would be nominal when compared either to the benefits to be derived or the costs of other federal housing efforts in the inner city.¹⁰ A subsidy would not normally be involved, and administration costs, small when compared to urban renewal, public housing, interest rate subsidy programs, or even normal FHA-assisted housing programs, could be covered by processing fees. Future bad experience with the guarantees can be avoided or minimized by establishing amortization periods for the new loans on the basis of careful projections of the time for which specific properties will, in fact, be lived in and therefore rent-producing. The Government's principal input would be the provision of FHA guarantees, plus, perhaps, manpower training assistance to permit the greatest possible exploitation of the training and job-creating opportunities such a program would offer. The benefits obtainable through the utilization of FHA guarantees in low income areas would be substantial. In the buildings reached, living conditions would be quickly and substantially improved without prohibitive costs to the property owners, the tenants or the federal government. While the unavailability of complete statistical data on existing mortgage terms, especially in "red-lined" areas, makes it impossible to predict how many housing units would be restored by this approach,¹¹ the outreach of the program could be considerable. Both rental and owner occupied housing could be made eligible and the program could be made available to new purchasers, including nonprofit corporations, cooperatives, and condominiums.

This proposal is not offered as a panacea, but only as a first step toward interim relief. It is not intended as a long-term solution to

10. The average interest reduction payment for a 235 home and a 236 rental unit is now estimated to be about \$850 and \$1,100 per year respectively in San Francisco. The average subsidy for rent supplement units is about \$1300, because the subsidy is greater. The public housing program subsidizes the entire production cost of each unit. If the housing is built on urban renewal land, then there should be added to the costs, any write-down on the urban renewal land as well as a proper portion of the administrative costs of the urban renewal project itself.

11. The Bureau of the Census is currently making a survey of residential finance which may provide some of the needed information. U.S. Dep't of Commerce News, *New Information About Residential Finances to be Obtained in Census Survey*, No. CB71-24 (Feb. 1971).

the housing problem nor as a substitute for existing programs and efforts. The repaired and improved buildings will not meet the standards of those produced under present, more heavily subsidized, federal rehabilitation programs. They will not last for the 30 to 40 years that rehabilitated buildings are intended to serve. While the program will indirectly tend to increase the supply of housing available, it is clearly not a solution to the problem of overcrowding. The program does not offer an easy remedy for the complex social problems that beset communities where deteriorated housing is located, although it may contribute to their resolution. It does not stipulate that plans for the betterment of whole neighborhoods be made a condition to eligibility. Improvements made by one or two property owners under the program may, however, stimulate or compel others in the neighborhood to follow suit.

Two additional considerations are worth noting. First, recent state legislation¹² and court decisions¹³ concerning landlord-tenant relations are seeking a balance of power between the parties by moving away from principles developed in agrarian feudal England toward a structure more consonant with the demands of crowded, modern-day American cities. Most significant for purposes of the proposed program is the recent emergence of the legal doctrine of implied warranty of habitability. In the leading case in this area, *Javins v. First National Realty Corp.*,¹⁴ the Court of Appeals for the District of Columbia held that in every residential tenancy the landlord warrants to the tenant that the apartment will be maintained in a habitable condition. The standard of habitability is determined by local health and safety codes. The warranty is non-waivable and can be enforced by rent withholding, actions for damages or specific performance.

While the law can impose upon landlords obligations to maintain residential properties in habitable condition, no benefits to either party will result unless the landlord has the economic means to fulfill this obligation. Property owners without the financial capability to meet such obligations may decide to abandon their buildings, thus intensifying the present housing crisis. This proposed program will enable the landlord to meet his habitability obligations.

Second, an important collateral purpose of the program is to increase employment opportunities for low income people and contract opportunities for minority businesses.¹⁵ The repairs and improvements financed under the program will, necessarily, be performed in neighborhoods where low income people reside. Many of the jobs

12. MASS. GEN. LAWS ANN., ch. 111, §§ 127F, 127H (Supp. 1970); MICH. COMP. LAWS ANN. §§ 125.530, 125.534 (Supp. 1970).

13. See, e.g., *Javins v. First Nat'l Realty Corp.*, 428 F.2d 1071 (D.C. Cir.), cert. denied, 400 U.S. 925 (1970); *McQueen v. Druker*, 317 F. Supp. 1122 (D. Mass. 1970), aff'd, 438 F.2d 781 (1st Cir. 1971); *Lemle v. Breeden*, 462 P.2d 470 (Hawaii 1969); *Pines v. Persson*, 14 Wis. 2d 590, 111 N.W.2d 409 (1961).

14. 428 F.2d 1071 (D.C. Cir.), cert. denied, 400 U.S. 925 (1970).

15. See Housing and Urban Development Act of 1968 § 3, 12 U.S.C. § 1701u (Supp. V, 1965-69).

created will not require highly skilled workmen; for those jobs that do, federally-financed training programs could be made available. Since home repair and improvement work is not a field dominated by strong construction unions, union-created barriers to expanded job opportunities should be less of an obstacle than in new construction or standard rehabilitation. Finally, individual contracts would be on a small enough scale to permit participation by many minority contractors who have neither the resources nor the bonding capacity to undertake large construction. The program would thus avoid serious difficulties that have limited the participation of minority contractors in other federal housing and development programs.

If adopted, the proposed program could provide significant improvement in the living conditions of many American families who otherwise will continue to live in substandard housing. It could do much to stem the tide of rapid deterioration now threatening the most valuable of all housing resources, the existing stock. It would put landlords in a position to respond in a constructive manner to reasonable tenant demands for improved housing, as required by emerging legal doctrine. Perhaps most importantly, the proposed program provides an opportunity to demonstrate to the people for whom "the national housing goal has not become a reality,"¹⁶ that the country is capable of providing direct, meaningful, immediate, and effective support and relief at a time when action is desperately needed.

The Refinancing Mechanism

The proposed program attempts to actuate federal guaranty powers to induce private institutional lenders to refinance existing short-term, high interest loans on deteriorated properties in order to make money available for their repair and improvement. It takes, as its starting point, the market realities of inner-city slum housing. Studies of the mortgage situation in New York and Newark by Professor George Sternlieb have shown that property owners in deteriorated neighborhoods typically carry short-term loans at high interest rates.¹⁷ Underlying this phenomenon is the well-known unwillingness of institutional lenders to make loans on properties in low income, "red-lined" neighborhoods and FHA's unwillingness to insure such loans under its existing programs.¹⁸ This pattern is probably repeated in other cities throughout the nation.

16. *Id.* § 2, 12 U.S.C. § 1701t (Supp. V, 1965-69).

17. STERNLIEB 107-19; STERNLIEB, *THE URBAN HOUSING DILEMMA: THE DYNAMICS OF NEW YORK CITY'S RENT-CONTROLLED HOUSING* 581-648 (preliminary draft 1970).

18. See note 9 *supra*.

Under the present proposal, the existing loans would be refinanced for longer periods of time and at lower interest rates. With the periodic payments on the new loan maintained at the same level as those of the existing loans, the resulting longer term and lower interest rates will permit an increase in the loan principal. That increase would provide the additional money needed for basic repairs and building improvements.

Various factors will influence the amount of repair and improvement money that can be derived through this mechanism. First, as the principal on the existing loans increases, the amount of repair and improvement money that can be made available by refinancing will also increase. Second, the higher the present interest rate is on the current debt, the greater will be the amount of repair and improvement money made available on refinancing. For example, a \$3,000 loan for five years at 15 percent interest would require monthly payments of \$75. If refinanced at 8 1/2 percent interest with a 1/2 percent mortgage insurance premium (MIP), \$3,000 would become available for repairs and improvements. If the current interest rate were 20 percent, the repair and improvement money obtainable would be \$3,630.

Third, as the term of the existing debt increases, the amount of repair and improvement money made available decreases. To illustrate, if a current three year, \$3,000, 10 percent interest loan were refinanced for an additional five years at 8 1/2 percent with a 0.5 percent MIP, \$3,859 of new money would become available for repairs and improvements. In contrast, if the current term was seven years, refinancing for an additional five years would produce only \$1,500 of repair and improvement money. Finally, the longer the new term is after refinancing, the more repair and improvement money that will be made available.

The repairs and improvements to be made under the program will be too limited to extend the lives of the upgraded buildings for 20 to 40 years, as is required under the existing rehabilitation programs.¹⁹ In many cases, even with the proposed repairs and improvements, continued occupancy for a period longer than perhaps 15 years would be intolerable. The term for any particular loan would be determined by the lender's judgment as to how long the property will continue to be occupied and produce sufficient revenue to support payments on the mortgage. To provide some protection to FHA, a 10 to 12 year maximum period for the new loans could be established.

The condition of buildings and the costs of making repairs and improvements will, of course, vary. For purposes of this analysis, it is assumed that the minimum amount needed for repair and improvement would be \$2,000 per unit. Existing loans with small monthly payments will not be sufficient to produce the needed mini-

19. See notes 27-31 *infra* and accompanying text.

mum repair and improvement money. Under these circumstances, a solution exists which involves increasing the monthly debt service.²⁰

A final limiting factor is the length of the amortization period of the existing loan. As that term increases, two problems arise. First, the additional term needed to produce a constant amount of repair and improvement money increases. Second, the overall length of the new loan will be increased because the term of the existing loan is longer. A 5 year \$3,000 loan at 10 percent interest would produce \$2,200 of repair and improvement money if it were refinanced for 10 years at 8 1/2 percent interest with a 0.5 percent MIP. In contrast, if the term of the existing loan were 7 years, approximately 9 years would have to be added to the term of the existing loan to produce \$2,200 of repair and improvement money. The overall term of the new loan would be 16 years. The result is that some loans will have existing terms too long to make the refinancing-repair and improvement approach feasible.

The impact of these limitations on the proposed program is not likely to be substantial. If mortgages with favorable terms are widely encountered, the impact of the proposed program would be substantial. Whether this will occur cannot, however, be established in advance because of the inadequacy of data on mortgage terms of inner city housing, especially in "red-lined" areas.²¹

The refinancing mechanism will produce the greatest amount of improvement money where the present debt is on a short-term basis and at a high interest rate. In some situations, the high interest rate is expressly provided for in the mortgage note. Where this is so, the benefits, consisting of increased principal obtainable by refinancing on better terms, can be directly and readily realized. If, however, the effective interest rate is high, but the interest rate expressed in the note is moderate, the full benefits of refinancing on better terms can be achieved only if certain additional steps are included. An effective interest rate higher than that expressed in the note may occur in at least two ways. First, the owner may have financed his purchase of the building with a note and purchase money mortgage taken back by the seller. If, because of the high risk involved, the seller would have preferred payment in full, he is likely to have increased the sale price of the property in return for his agreement to take back part of the price in the form of a note from the buyer. The result of that inflated price is that the real market value of the property received by the buyer is less than the total of his downpayment and the note he has signed. That excess, and the interest he is obliged to pay on

20. See *Different Financing Situations* *infra*.

21. See note 9 *supra*.

the excess, is, in effect, a further charge for borrowing the money needed to purchase the property.²²

An effective interest rate higher than the expressed rate might also be secured in situations in which the purchase is financed with a loan from a third party. Thus, the buyer and the seller would agree upon a purchase price. The buyer would pay part of that price with his own money and the rest with money borrowed from a third party. The third party, in agreeing to make the loan, would demand a discount from the borrower for making the money available. The borrower would receive the amount necessary to cover the difference between the purchase price and the cash down payment. The amount of the note, however, would exceed the amount of cash received by the borrower to the extent of the discount charged. That excess and the interest paid upon it would, again, represent an additional charge for the money needed to purchase the property.²³

If the full amount of these existing loans were to be refinanced for longer terms at market rate interest, additional principal would be made available only as a result of extending the amortization period. The high effective interest rate would remain, and thus the chance to achieve additional savings by reducing that high rate would be lost. In addition, the lender may obtain repayment of some funds he never realistically expected to receive, given the high risk character of the loan.

Loss of the full benefits obtainable through refinancing could be avoided and any windfall prevented, if, as part of the refinancing, the lender were to agree to accept less than the outstanding indebtedness on the note in return for immediate repayment in cash. Such a bargain should be possible if the conditions of the building and its neighborhood have sufficiently jeopardized the lender's security so as to make the prospect of an immediate cash repayment attractive. The risk that the lender may be liable for property damage or personal injuries resulting from the substandard condition of the building²⁴ may provide an additional incentive to accept repayment

22. See STERNLIEB 116-17.

23. See *id.* at 114-16. If the lender did not wish to charge the discount directly, alternative devices might be employed. Under one method, the purchaser would provide a cash down payment and a note for the remainder of the price, which the seller would then sell to the third party lender. The purchase price would be set sufficiently high to ensure that the total amount by which the lender discounted the note would not reduce the total amount of cash received by the seller to less than the price at which he would have sold the property in an all cash transaction. The amount of the discount and the interest paid upon it are additional costs to the purchaser of financing the purchase. Alternatively, the seller could transfer the property to the third party lender who would in turn sell the property to the true purchaser. The price in the first transaction would be the price of an all cash transaction. The price to the ultimate purchaser would be increased by an amount the lender considers necessary to cover the risks involved in making such a loan. That price differential, and the interest paid on it, again would constitute an additional cost to the purchaser of financing the transaction.

24. See *Morocco v. Felton*, 112 N.J. Super. 226, 270 A.2d 739 (1970); cf. *Connor v. Great Western Sav. and Loan Ass'n*, 69 Cal. 2d 850, 447 P.2d 609, 73 Cal. Rptr. 369 (1968).

at less than par.²⁵

To ensure that advantage is taken of this opportunity for savings, the owner should be required to certify, as a condition precedent to the FHA guarantee, that he has used his best efforts to secure agreement from the lender to accept less than the full amount of the outstanding debt in respect of the refinancing. The owner would be required to use any money saved for repairs and improvements rather than for extraneous personal purposes, and, to that end, should certify both the amount expended in satisfying the existing debt and that the excess was spent on repairs and improvements.

To further minimize the possibility of undue benefits to lenders, and to ensure realization of the full savings potential, the new mortgagee might be required to certify that, in light of the circumstances and upon the information available to him, it is his best judgment that the owner has secured from the prior lender the best possible terms for repaying the original loan. The mortgagee could be directed to consider any evidence of hidden financing charges created by inflated prices or substantial discounts. To make certain that the mortgagee had access to relevant information, the borrower and the original lender could be required to submit information to the mortgagee, under penalty of perjury, about the transaction from which the loan arose. That information could include the purchase price, the down-payment made, and the size of the original note. The mortgagee would have to consider, as well, the probability that the lender would eventually collect all of the outstanding debt if it were not refinanced. The accuracy of the certification should not be made a condition of the validity of the FHA guarantee, lest the lenders be too cautious or reluctant to enter the program. However, gross carelessness about its accuracy or intentional falsification could be a ground for imposing criminal penalties or blacklisting the lender from future FHA operations.

The Repairs and Improvements Contemplated

The refinancing program contemplates repairs and improvements which will substantially improve living conditions²⁶ for people who

25. If the mortgagor is a member of a minority group, a reduction might also be legally enforceable under the rationale of *Contract Buyers League v. F & F Inv.*, 300 F. Supp. 210 (N.D. Ill. 1969), *aff'd sub nom. Baker v. F & F Inv.*, 420 F.2d 1191 (7th Cir. 1970). The case involved black homebuyers who had been sold houses at inflated prices by sellers who were exploiting the pattern of racial discrimination in the market. Relying on the Civil Rights Act of 1866 and the thirteenth and fourteenth amendments, the court held that selling residential property to blacks at higher prices and on more burdensome terms than similar property is sold to whites is illegal. As a result, the seller would be ordered to repay the price differential to the buyers, if the allegations of the complaint were proven at trial.

26. There is much current discussion of new technological innovations in

now, and in the future, will continue to live in substandard housing. Yet these improvements will be made with per unit expenditures substantially below those in the HUD rehabilitation programs.²⁷ Doubts that lower expenditures can produce significant improvements will be dispelled when the aims (and therefore needs) of the two programs are compared. The goal of programs such as Urban Renewal,²⁸ Concentrated Code Enforcement²⁹ and rehabilitation under sections 235³⁰ and 236³¹ is to provide sound housing that will last for the life of a mortgage that may be amortized over 35 to 40 years. In short, they seek to provide long-term solutions. The proposed approach, in contrast, is intended to provide relief for the millions of people who have not been served by the long-term solutions. Given the various constraints under which the more expensive and ambitious programs operate, it is believed that a more modest approach is needed.

A variety of factors will influence the type of repairs and improvements possible under the proposed approach. The first variable will be the condition of the particular building and the specific repairs needed. Choice of the repairs to be made will vary from building to building. Some buildings treated under the program would be worthy of full-scale rehabilitation, if money were available and a general program of neighborhood revitalization were undertaken. If such rehabilitation is anticipated in the near future, repairs that would be reused in the later rehabilitation, such as repairs to the mechanicals in the building, should be emphasized. A building located in a neighborhood likely to become commercial or industrial might not warrant

materials and construction techniques for both housing production and rehabilitation. See *HUD Requests Proposals for Operation Breakthrough*, HUD News, June 26, 1969; Department of Housing and Urban Dev., Request for Proposal No. H-65-70 for the Study of and Reports on the Development of Optimum Approaches to Techniques for Larger Scale Rehabilitation of Dwellings, at 9-11 (May 14, 1970) [hereinafter cited as HUD Rehabilitation Study]. See generally Bryan, *The Rocky Road to Low Income Rehabilitation for the Private Investor*, 27 J. OF HOUSING 76, 77-82, 87 (1970). Many new techniques are already in use and, no doubt, others will develop from the experience of HUD's Project Rehabilitation. Romney Announces "Project Rehab" to Rebuild Slums on Large Scale, HUD News, July 21, 1970. These new techniques should reduce the costs of repairs and building improvements and offer some promise of an increased return for each dollar expended. They will not, however, obviate the need for interim assistance, as here proposed.

27. Rehabilitation costs in connection with urban renewal and other projects averaged \$10,833 per unit for a Warner & Swazy project in Cleveland, see Bryan, *The Rocky Road to Low Income Rehabilitation for the Private Investor*, *supra* note 26, at 76, 79; \$9500 per unit for a Camden Home Improvement Project's effort in Camden, New Jersey, *id.* at 87; about \$11,000 per unit for Philadelphia's Used House program, *id.* at 89; \$8,500 per unit for Pittsburgh's AHRCO projects, Wall St. J., Sept. 3, 1970, at 15, col. 1; \$9,600-13,700 per unit for the Low-Income Housing Demonstration project undertaken by the South End Community Development, Inc., in Boston, WHITTLESEY, *THE SOUTH END ROW HOUSE 4-18* (1969); and about \$7,750 per unit for the famed BURP project in Boston, Goldston, *Burp and Make Money*, HARV. BUS. REV., Sept.-Oct. 1969, at 89, 97.

28. Housing Act of 1949, 42 U.S.C. § 1450 (1964), as amended, (Supp. V, 1965-69).

29. Housing and Urban Development Act of 1965 § 311(a), 42 U.S.C. § 1468 (Supp. V, 1965-69).

30. Housing and Urban Development Act of 1968 § 101(a), 12 U.S.C. § 1715z (Supp. V, 1965-69).

31. *Id.* § 201(a), 12 U.S.C. § 1715z-1 (Supp. V, 1965-69).

the making of substantial and reusable improvements. In such a case, repairs, rather than total replacement, would be indicated. More money could then be allocated to other improvements of an admittedly shorter lifespan. The amount of improvements that can be made will, of course, be a function of cost. Labor and materials costs vary widely in different areas of the country and from city to city. The type of labor used, union, non-union, or a combination thereof, will be an unknown. Use of the property owner's own labor force or self-help by the tenants could materially reduce costs.

While the specific improvements to be made will vary in any particular case, the level of improvement toward which the program would aim can be described. The buildings should be made weather-tight, as to both air and water, including internal leaks. They should have adequate and safe electrical, heating and plumbing systems, and be secure from criminal intrusion. Rats and other rodents should be eliminated. Risks of fire should be reduced to acceptable levels, safety hazards such as broken glass, holes and weaknesses in floors and weak or broken stairs should be repaired. The housing should be made not only safe, but also more pleasantly livable. In the latter category, such actions as repair or replacement of kitchen and bathroom fixtures, the possible addition of new mail boxes, better lighting, cleaning and repainting of walls and ceilings and resurfacing of floors, might be included.

Some impression of the program's beneficial impact can be secured from a review of the specific repairs that must be made. For the area surrounding the building, the major effort would be a thorough clean-up and the elimination of substantial safety hazards, such as exposed wiring. Depending on conditions and available money, broken fences and cracked walls would be repaired or replaced. Treatment of the building exterior may depend upon whether the building siding is constructed of brick, stone, wood, shingles, stucco or other material. It is unlikely that there will be enough money for anything other than scraping and repainting.

All buildings included in the program should be made to comply with local health and safety regulations to the extent that these are applicable. These regulations are commonly contained in housing codes which apply retroactively to all housing, provisions of building codes that were in effect when the building was constructed, and those portions of the current building codes that would be made applicable by the repair work. The FHA should be unequivocally authorized or instructed to rely on local code compliance certifications.

One further question concerns the desirability of limiting the proposed approach and program to buildings which have reached a specified state of deterioration. A rough distinction may be drawn between buildings only threatened with deterioration and those which have

already deteriorated substantially. Such a distinction is commonly made in selecting buildings for the Concentrated Code Enforcement program (which normally are declining) and those which might be rehabilitated under FHA's section 236 program or within an urban renewal area (which usually are much more deteriorated).³²

For reasons set forth below in the discussion of costs to the federal government,³³ the proposed FHA guarantees should be made available to owners of buildings in both categories. This proposal is intended primarily, however, as a mechanism to channel money for improvements to seriously deteriorated housing, and safeguards should be enacted against the possibility of diversion of the bulk of its resources to houses in the "grey area," to the neglect of houses already in critical condition.

The Cost to the Property Owner

The proposed approach will not require the property owner to increase his out-of-pocket monthly expenditures. His debt service payments on the new loan will be no higher than those on his existing indebtedness. He will, however, be obligating himself to continue loan payments over an extended period of time. Absent refinancing of his existing debt, rent money used to pay for debt service during that added period would have been additional cash flow. In the normal case, refinancing a loan for a longer period does not diminish an owner's profit, provided that additional earnings attributable to the investment of the borrowed money equal or exceed the cost of that money to the owner. The landlord operating under this program, however, will be prevented by law and regulations from increasing rents to cover the cost of the additional money derived from the new loan and used for repair and improvements. To provide otherwise would be to frustrate the program's fundamental purpose of improving the living conditions of people now occupying deteriorated housing without increasing their rents.

This apparent deterrent to participation is largely offset by several positive factors. First, the repairs and improvements made with the additional loan funds will increase the long-term value of the improved building. Part of that increase will survive beyond the extended amortization period; the extent of increased value will depend upon the nature of the repairs and improvements made and the improvement or further deterioration of the surrounding neighborhood. Second, certain repairs and building improvements will reduce future expenditures for maintenance. Thus, roof repairs done at the time of refinancing will tend to eliminate more expensive emergency repairs at a later date. Third, the improved condition of the property will tend to reduce the future vacancy rate thus increasing total

32. See HUD, Code Enforcement Grant Program Handbook, ch. 1, at 1 (RHA 7250.1).

33. See text accompanying notes 44-51 *infra*.

rent receipts and profit. The landlord's relation with the tenants ought also to improve as a result of better living conditions. Finally, interest payments made on the loan will be deductible for federal income tax purposes³⁴ and the investment in repairs and improvements will be depreciable.³⁵ Under the 1969 Tax Reform Act, the investment could be written off over a period of five years.³⁶

Given the many variable elements, the exact profit or cost to each landlord will be too speculative to permit accurate prediction. The uncertainty of several key factors, such as lower vacancy rates or reduced expenses, will continue even after the loan is made. Savings in these areas are, nonetheless, valid considerations, reducing the economic burden to the property owner. On a straight dollars and cents analysis, many property owners will be better off by participation in the proposed program than they are under present conditions.

The Cost to the Tenants

Improvement of the living conditions of people now occupying substantially deteriorated buildings is the primary objective of the present proposal. If the rents were to be increased as a result of the improvements, many tenants would have to relocate, thus frustrating the program's objective. Accordingly, provisions to ensure that landlords do not increase rents to cover the costs of the improvements, real or assumed, must be included.

A workable mechanism sufficient to prevent such rent increases presently exists and is operative in all FHA multifamily projects.³⁷ In each such project, a rent schedule is established as part of the financing agreements, on the basis of estimated debt service, operating expenses, property taxes, and allowable profit. Landlords are precluded from charging rents in excess of the established schedule, except upon prior approval from HUD. In considering whether to grant or deny such approval, HUD must consider whether, and to what extent, property taxes and anticipated operating expenses will be higher than those prevailing when the last rent schedule was approved.

The FHA rent regulation mechanism could readily be adapted for use in limiting rent increases on properties improved under the proposed program. The debt service, the operating expenses, the property taxes, and the profit prevailing at the time an application is made for a loan under the program would first be ascertained. The landlord would

34. INT. REV. CODE of 1954, § 163.

35. *Id.* § 167.

36. See Tax Reform Act of 1969 § 521(a), INT. REV. CODE of 1954, § 167(k).

37. See 24 C.F.R. §§ 207.19(e), 220.511, 221.530 & 236.55 (1970).

be prohibited from increasing the existing rents to cover any of the costs of improving the condition of the property attributable to the insured loan. Over the period of the loan, he would be allowed to increase rents only to the extent necessary to cover increased taxes or operating expenses, and only with HUD approval.

The rent regulation system would have to include procedural safeguards to protect against abuses on the part of the landlords. The first problem will be accurate determination of the rents existing at the time the application is made. The landlord will have an incentive to overstate these rents and could do so in at least two ways. First, he could simply report them as higher than they, in fact, were. To protect against this possibility, the landlord should be required to submit to the FHA a statement of the existing rents verified by the tenants who are actually paying them; falsification of that statement would subject the landlord to criminal prosecution.³⁸ Second, the landlord might raise his rents, in anticipation of application for a loan under the program, to a level that would allow him an increased profit. It might seem that such a rent increase would be precluded by operation of the market, since commonly, rents are already exorbitant. Landlords might, however, avoid the effect of the market factors by encouraging new tenants to move in, promising substantial improvements of the building in the near future. Alternatively, landlords could evict tenants who refused to pay the higher rents, leaving the units vacant until the work is done.

To safeguard against such anticipatory rent increases, it should be conclusively presumed that any rent increases within a one-year period prior to the loan application are anticipatory. In addition, the landlord should be required to justify any rent increases made during the two years prior to that period. If the rent had been increased during the one-year period, or if the landlord could not justify rent increases made during the earlier period, the rent used as a base would be the rent charged prior to the anticipatory increase.

The second step would be to establish the level of existing debt service. There is little potential for abuse here, because debt service would not increase during the course of the refinanced loan. In addition, a certification system could be used. The property owner would be required to submit a statement to HUD, confirmed by the holder of the existing indebtedness, and subjecting the landlord to criminal sanctions for perjury.³⁹

Where there is no existing loan, or where the existing loan is too small to produce sufficient repair and improvement money when refinanced, the landlord will be paying a higher debt service if he undertakes the proposed program. It is, nevertheless, essential that the improvement of the property not result in an increase in the rents. As a result, any increased debt service in these cases should be disregarded

38. 18 U.S.C. § 1010 (Supp. V, 1965-69), *amending* 18 U.S.C. § 1010 (1964).

39. *Id.*

in calculating the rents. Disregarding the debt service will force the landlord to absorb cash-flow costs in making the repairs. The proposed program, however, is voluntary, and the landlord is free not to apply for a guaranty if he is unwilling to absorb such costs.

Third, property taxes assessed on the property at the time of the application can be easily established by a submission made by the owner and checked against the tax records. Any increased taxes caused by an increase in the tax rate would constitute grounds for a rent increase. If property tax increases, directly caused by upward revaluations of the property resulting from the improvements to be made, are considered a valid basis for rent increases, the tenants would be effectively sustaining increased rent costs as a result of the refinancing. Nonetheless, if tax assessments are raised, simplicity and fairness may require that the rent increases be allowed.⁴⁰

Fourth, and most troublesome, is the problem of the landlord's operating expenses. A landlord may understate his expenses at the time of application and overstate them when a rent increase is requested. These statements may involve his estimates of the value of work he performs himself and his reporting of the cost of work done by others. Distortions resulting from improper evaluations of work performed by the landlord himself should be controllable. At the time of the initial loan request, the landlord may be required to specify in detail the nature and extent of the work he does personally and the value he places on that work. At the time the rent increase is requested, similar specifications may be required. So long as the items of work performed and their valuations remain constant, an exaggeration or underestimate of either element makes no difference. If, however, the landlord increases the evaluation of his own time or changes the items or work he performs, he should be required to prove that change by substantial and convincing evidence.

Operating expenses consisting of work items performed by others raise the same danger of underestimation and exaggeration. Again, the landlord should be required to prepare and submit detailed specifications of the items of expenses he incurs and the amount expended on each. Similar specification should be required at the time rent increases are requested. Both specifications should be subject to penalties for falsification. Any changes in either the items or costs specified would require justification by the landlord. HUD has sufficient knowledge of prevailing rental property operating expenses to enable it to exercise control over the accuracy of the landlord's submission.

The scope of HUD's investigation should not be limited to the ac-

40. See text accompanying notes 72-77 *infra*.

curacy of the current submission. If the apparent increase in operating expenses results from an underestimation of the operating expenses at the time the loan was applied for, the rent increase should be disallowed. To control such underestimation, the scope of HUD's examination at the time of any rent increase application should include the figures submitted either initially or in support of any prior application.⁴¹

As an additional and essential safeguard against landlord abuse, the tenants must be permitted sufficient opportunity to object to any rent increase application being considered by HUD.⁴² The tenants have the most direct interest in preventing rent abuse; they will be frustrated and angered if they are excluded from the HUD considerations but are bound by its results. Their inclusion will serve to dispel any erroneous assumptions they may be making in regard to the landlord's cost increases, thereby avoiding serious trouble between the landlord and the tenants.

One other question involving operating expenses is whether landlord should be allowed rent increases if their operating expenses increase but their overall expenses or profit patterns remain the same or improve, possibly because the repairs and improvements have reduced other elements of cost or have favorably affected other profit factors. To deny such an increase would be unwise. Among the inducements to the landlord to participate in the proposed program will be his hope of offsetting costs. If the landlord is allowed to enjoy these savings only when other expenses do not increase, these inducements become ineffective or, where effective, misleading. The conclusion must be that savings in operating expenses properly attributable to the repairs and improvements should not be deducted from any demonstrated increases in other expenses.

The final detail of the rent regulation procedure concerns the vacancy factor. Existing HUD rent regulations which are concerned with securing a reasonable return for landlords allow for vacancies of about seven percent.⁴³ Under the proposed program, the concern is only that the rents not be increased because of the costs of the improvements. The landlord's return is not relevant. Thus, a vacancy factor, as it ordinarily operates, would not be relevant. A problem will arise, however, if at the same time that operating expenses increased, the vacancy level is reduced, possibly because of the building's improved condition. When the landlord seeks a rent increase to cover the increased operating expenses, the initial reaction might be that such an increase is unjustified because the lower vacancy rate results in higher overall rent revenue that can cover the increased expenses. This conclusion ignores the fact that a lower vacancy rate was one of

41. Cf. *Hahn v. Gottlieb*, 430 F.2d 1243 (1st Cir. 1970).

42. See *Geneva Towers Tenants Organization v. Federated Mortgage Investors*; Civil Action No. C-70-104-SAW (N.D. Cal., filed Jan. 15, 1970); *Marshall v. Romney*, Civil Action No. 2288-70 (D.D.C., filed July 31, 1970). But cf. *Hahn v. Gottlieb*, 430 F.2d 1243 (1st Cir. 1970).

43. See FHA MANUAL § 64205.2c(3) (Jan. 1969).

the factors that induced the landlord to participate in the proposed program. Thus, any fluctuation in the vacancy rate should be ignored in calculating the permissible rent increases.

The Cost to the Federal Government

Before this proposed refinancing program can be undertaken it is essential to evaluate the cost of such a program to the federal government. Four elements of possible cost to the Government require analyses: subsidy cost, administrative costs, guarantee costs, and secondary mortgage market costs.

Unlike the FHA-assisted programs, such as section 221(d)(3),⁴⁴ section 236⁴⁵ and section 235,⁴⁶ which involve interest subsidy payments, and unlike the Urban Renewal programs⁴⁷ which involve major governmental appropriations and expenditures, the proposed program would involve no direct subsidy costs. The interest payable on the refinanced loans would be set at market rate. The buildings to be improved would be owned originally by the mortgagors or would be purchased by them at market prices.

Administrative costs should be much lower per unit than those incurred in other federal programs. In the Urban Renewal, Neighborhood Development, and Concentrated Code Enforcement programs, high administrative costs are largely attributable to the involvement of a multiplicity of actors: Various branches of HUD, on local and national levels; various agencies of local government; and various private organizations and individuals. The coordination and involvement of all these groups is time consuming and expensive. When efforts are made to provide complete solutions for whole neighborhoods, which necessarily involves dealings with recalcitrant individuals and resolution of difficult planning problems, administration costs soar. In contrast, the proposed approach is not conditioned on area-wide treatment and involves only four or five participants: FHA; a lending institution; the property owner; and possibly a tenant group or code enforcement agency.

When compared to the existing FHA programs, the administrative expenses will be small. Primary reliance would be placed upon the lender's determination of the economic soundness of the refinanced loan.⁴⁸ Unlike the usual FHA new construction or substantial re-

44. National Housing Act § 221(d)(3), 12 U.S.C. § 1715l(d)(3) (Supp. V, 1965-69), amending 12 U.S.C. § 1715l(d)(3) (1964).

45. *Id.* § 236, 12 U.S.C. § 1715z-1 (Supp. V, 1965-69).

46. *Id.* § 235, 12 U.S.C. § 1715z (Supp. V, 1965-69).

47. See Housing Act of 1949, 42 U.S.C. § 1450 (1964), as amended, (Supp. V, 1965-69).

48. See text accompanying notes 62-66 *infra*.

habilitation program, the work will be done on a relatively limited scale and there need be no detailed processing as would be required in the case of plans for major construction or rehabilitation, which must be developed, revised and approved by the FHA.⁴⁹ Within broad limits, the items to be covered would be left to agreement between the property owner, the tenants, and possibly local housing code enforcement officials. FHA would have no responsibility to look behind certifications from local code agencies that code requirements had been met or waived. Its administrative functions could, accordingly, be limited to the review of plans, an inspection to see that the work was done, and receipt and verification of the information needed for the rent regulatory function. Once the repairs and improvements were completed, HUD's primary function would be regulating the rents. The costs of these administrative functions should be modest and could be covered through the processing fees proposed.

The third element of cost, the guarantees, will not be expensive for the federal government unless the program results in a substantial number of loan failures. Normal and limited guarantee payments would be covered by the mortgage insurance premiums. More numerous payments could be avoided by realistic appraisals of the period of time during which the property in question will be occupied, thereby insuring sufficient revenue to meet the debt service and providing the owner with enough profit to deter his selling or abandoning the building. The building must, of course, be appraised to determine how long it may be expected to remain standing and habitable. Fundamental business principles require that these determinations be made carefully, but not overcautiously; if they are made too conservatively, the entire governmental purpose of backing the program will be frustrated. Even if a considerable amount of bad debt is incurred, the costs will prove negligible as compared with the cost of other programs intended to provide relief from the present housing crisis.

The cost of secondary mortgage market operations is the final expense to be evaluated under the program. It probably will be necessary to permit institutional lenders to sell the refinanced mortgages to one of the national mortgage associations.⁵⁰ If the sale is to FNMA or the Federal Home Loan Banks Board's new secondary market facility, no cost to the Government will be involved. The purchasing mortgage association would pay a price for the mortgage which would secure to it an adequate return to cover any servicing expenses and to produce a reasonable profit.

If the price paid for these loans on the secondary market falls too low, discounts charged to property owners by the institutional lenders could greatly increase the effective costs to the property owners. If that situation should develop, an operation like the GNMA tandem

49. 1 Handbook on Housing Law, Guide to Federal Housing, Redevelopment and Planning Programs, ch. V, at 133-57 (1970).

50. See text accompanying note 60 *infra*.

plan⁵¹ for nonprofit sponsors, under the section 236 program, could be utilized. Under that plan, GNMA saves the nonprofit sponsors the discount by agreeing to buy the mortgage from the institutional lender at par. It then sells the mortgage to FNMA at the market price. The difference between the par value and market price is a loss absorbed by GNMA and thus a cost to the federal government. If such a tandem plan were necessary to make the proposed program feasible, costs to the Government comparable to those incurred under the section 236 program would be involved, but the same justifications that sustain the present tandem plan would be applicable.

Possible Constraints and Limiting Factors

Several possible constraints and limiting factors capable of impeding or undermining the effective operations of the proposed program will require provision of appropriate safeguards. These are: (1) applicability of the program to properties on which the financing differs from the prototype discussed above; (2) possible property owner reluctance to refinance under the program; (3) the possible absence of a repair and improvement industry capable of performing the work; (4) the possible unwillingness of institutional lenders to make money available; (5) bottlenecks that might be caused by FHA processing; (6) impractical or uneconomic requirements imposed by local codes and zoning laws; (7) difficulties resulting from temporary or permanent relocation requirements; and (8) prohibitive property tax revaluations. Each of these potential constraints or limiting factors is discussed below. None of them, the authors believe, would prevent or seriously impede the operations of the proposed program.

Different Financing Situations

The basic refinancing situation discussed above will be subject to four important variations, which necessitate separate analysis. The first situation involves a landlord who is near the end of a short-term amortization period. The short-term, high interest loan which has been almost entirely paid, offers important advantages. The later in the amortization period that a loan is refinanced, the shorter the term of the new loan that is needed to produce a fixed amount of repair and improvement money. Correspondingly, if a fixed period is established for the new loan, the later in the amortization period the refinancing occurs, the greater the amount of repair and improvement money that will be made available. Thus, refinancing

51. *Ginnie Mae, New Girl of Mortgage Finance*, HUD CHALLENGE 24, 26-27 (March-April 1970).

near the end of the term of a loan will be advantageous to the Government, because the term of the refinancing loan will be shorter, and the chances of default thereby reduced. In addition, a shorter term refinancing loan will not increase the property owner's costs.

Second, the loan to be refinanced may have been a long-term, low interest loan, obtained at a time when the surrounding neighborhood was acceptable to institutional lenders. The term of such a loan could be extended to produce additional repair and improvement money, without increasing the monthly payments. If the original principal on such a loan was large, the monthly payments may be sufficiently high, despite the long amortization period, to support a new loan that will provide sufficient repair and improvement money. As the unpaid principal on such a loan, and, consequently, the monthly payment decreases, however, less repair and improvement money will be made available.

Situations in which refinancing does not produce sufficient repair and improvement money or in which there is no existing debt to refinance, raise additional, but not insurmountable, problems. In both situations adequate repairs cannot be financed without increasing the owner's monthly debt service payments. Securing the needed money with an FHA guarantee, however, should be substantially more attractive to the landlord from a cost viewpoint, than seeking such financing from private lenders at high interest rates and on a short-term basis. In addition, the property owner with some existing debt will secure the savings made available by refinancing that debt at a lower interest rate and for a longer term. Finally, provision could be made to combine the refinancing with a subsidy to cover any additional repair and improvement money needed.

The same refinancing mechanisms apply if the loan is made to a property buyer instead of the existing owner, but the amount of the loan available to the purchaser must be carefully considered. In the simple situation, when the buyer is able to pay the difference between any existing short-term, high interest debt and the purchase price of the property in cash, the payments on the seller's existing debt could be the standard for measuring the principle of the new loan, which would be for a longer term and at lower interest rates. The purchaser would be required to use the new loan to satisfy the existing debt and to make the needed repairs and improvements. For example, if the purchase price were \$5,000 per unit and the existing debt per unit were \$3,000 for five years at 10 percent, the new loan, at 8 1/2 percent interest with 0.5 percent MIP for ten years, would be about \$5,200. The buyer would use \$2,000 of his own money and would add \$3,000 of the new loan to cover the price of the property. He would have \$2,200 left for repairs and improvements.

The existing debt may, however, be so low that the buyer will be unwilling or unable to pay in cash the difference between the existing debt and the price of the property. Here, one potential solution would be to require the purchaser to make a minimum prescribed

down payment, in return for which he would become eligible for a loan under the program at institutional lenders' interest rates and for a term that would, with some cushion, approximate the time during which the building would be revenue producing. The payments on this loan would be those which the current rents could cover and still produce a return on the buyer's equity that would either equal the return received by the existing owner or be reasonable under the circumstances. The principal of the loan would then be the amount that those payments would amortize over the pre-established period. It would be used to pay the remainder of the purchase price and make repairs and improvements.

A serious problem with this solution would be its inherent tendency to increase purchase prices, as a result of the availability of reasonable financing. Buyers might not be able to resist purchase price increases because a higher price, with the more favorable financing available, would not decrease their return on the property. As the purchase price increases, less of the new loan money would be available for repairs and improvements. The beneficial financing terms made available by the proposed approach would then only result in increased profits for the sellers of the property.

An alternative and more satisfactory solution would require the buyer to make a substantial down payment. Then it would be necessary to determine the terms upon which financing would be available in the private lending market for the remainder of the purchase price. Using the monthly payments required under those terms as a standard, the amount of the loan to be made available under this proposed approach could be determined. Because of the more favorable terms, that principal would exceed the amount that would be otherwise available. The purchaser would be required to use that excess for repairs and improvements. As a result, he would be unwilling to pay a purchase price higher than the one he would pay if the favorable financing were not available.⁵²

52. An example will illustrate how the two solutions differ. For particular property, financing might be available from private lenders at 15 percent with a 5 year loan, if a down payment of 25 percent were made. With such financing, a purchaser would be willing to pay \$4,000 per unit for the property, if he were reasonably sure that the rents less operating expenses and taxes would provide him an adequate return and cover the \$75.00 monthly debt service that would be required. If he were able, however, to get 10 year financing (for purposes of this example it is assumed that a 10 year term would be safe) at 9 percent interest, he might be willing to increase the purchase price to as much as \$6,920 because the monthly payment on the debt service he is required to pay would be the same. All of the additional principal made available by the better financing would be absorbed by an increased purchase price.

If the second solution were used, the result would be different. If the purchaser would be willing to put \$1,000 down and make \$75.00 monthly payments, with the private 15 percent 5 year financing available, the loan would

The use of the proposed program in sale situations may permit property owners with substantial investments in slum properties to liquidate those investments by selling to individuals who would finance the purchase under the proposed program. If a small down-payment were all that was required, the danger would exist that the owners' investments in slum properties, which now prevent them from abandoning their buildings, would be turned into mortgages insured by the federal government. If the purchasers under those mortgages were to decide to abandon, they would have little equity to lose, the lender would lose no mortgage money because of the FHA guarantee and the FHA would end up owning all the property. A high down payment requirement, for example 25 to 30 percent, would protect against this risk.

The minimum equity requirement could also be used to prevent owners from withdrawing their equities by transferring the property to a strawman. Under such a scheme, the strawman would take the property subject to any existing financing and agree to pay the remainder of the purchase price under a short-term high interest note secured by a purchase money second mortgage. The strawman would then apply for a loan under the program to refinance both mortgages. If refinancing was obtained, the repayment of the second mortgage would, in effect, allow the owner to take his equity out of the property.

Limiting the new loan to a specified percentage of the appraised value of the property, 60 percent, for example, would ensure that the existing owner would not be able to withdraw too much of the equity from the property. Alternatively, the FHA might be given discretion to refuse insurance in any case where recent transactions with respect to the property indicate that the owner's intention has been to utilize the financing provided by the program to withdraw his equity. As such provisions could complicate and delay loan processing, particularly if FHA were to be unduly cautious about granting approvals or in making appraisals, they could be limited to cases where there had been a sale or refinancing of the property within the four year period preceding the application or since the enactment of the proposed program, whichever period is shorter.

The treatment of owner-occupied properties should basically parallel the treatment of rental properties. The payments on the existing short-term, high interest loan would provide the standard for determining the principal on the new longer-term, lower interest loan. That part of the principal not needed to satisfy the existing debt would be used for repairs and improvements. The term of the new loan would be determined not by the period over which the property would produce sufficient revenue to meet the debt service, but the period during which the owner, or others with comparable capacity to meet the debt service, would be likely to occupy the building. In the owner-occupied situation, there would need to be more concern with the property owner's personal financial capability to pay off the debt because no revenue would be produced by the building. Pre-

sumptively, if the owner is able to meet the current payment, he should be able to meet the same payments for a longer period of time; yet, this presumption is not conclusive since the owner's financial situation might change before the end of the term of the new loan.

Situations involving owner occupied homes in which there is no existing financing or where the existing debt is too small to produce sufficient repair and improvement money can be handled in the same manner as rental property. The homeowner could either take out a new loan or increase his monthly mortgage payments to produce sufficient money to make repairs and improvements. Of course, in such a situation, closer scrutiny would be given to the homeowner's capacity to meet those payments.

Reluctant Property Owners

The possibility that property owners may fail to take advantage of the proposed program must be considered since the proposal operates on a voluntary basis. The incentives for a landlord to participate have already been outlined.⁵³ He will be able to improve his property without incurring additional out-of-pocket expense. Lower maintenance expenses, higher total rental receipts, and federal income tax benefits can be expected. He will not, however, be permitted to charge higher rents by reason of the improved condition of the property and he will be paying debt service for a longer period. Uncertainty as to the extent that the extra debt service will be offset by the other enumerated factors may result in landlord reluctance to utilize the program.

The effectiveness of the proposed program will not, however, depend on inducements alone. Two important sources of pressure will "encourage" landlords to secure loans and to make repairs and im-

be \$3,000. If the purchase was financed under the proposed approach for 10 years at 8.5 percent with a 0.5 percent MIP, the loan, supported by those same \$75.00 monthly payments, would be \$5,920. Of that amount, \$2,920 would have to be spent for repairs and improvements, and only \$3,000 would remain to pay off the purchase price. If that price was increased above the \$4,000 the purchaser was willing to meet with private financing, the purchaser would refuse to buy the property because his total investment, including the repairs and improvements, would be too great.

The situation in which there is no existing debt on the property to be purchased can be treated in the same manner as the situation in which the existing debt is too low. A minimum down payment would be required. An estimate could be made of the terms upon which private financing would be available for the remainder of the purchase price. The monthly payments under those terms would determine the principal of the lower interest, longer-term loan made under the proposed program, and that loan would be used to pay off the remainder of the purchase price and make repairs and improvements.

53. See text accompanying notes 34-36 *supra*.

provements. First, and most important, the tenants themselves, through the increasingly successful tenant union movement, may be expected to pressure landlords by rent withholding action, sanctioned by the emerging landlord-tenant law in this area.⁵⁴ Local code enforcement agencies should provide a second source of pressure. Such agencies have thus far been frustrated in their efforts to obtain strict enforcement of housing codes due, in considerable part, to the assumption that it is economically impossible for landlords to secure a satisfactory return upon property rented to low income tenants if the property is maintained in compliance with applicable codes. Strict code enforcement, it is feared, would therefore drive landlords out of business. The paralyzing impact of this contention could be substantially eliminated if improvement monies become available to landlords under the approach proposed. Local officials concerned with code enforcement will be much less reluctant to insist that landlords maintain their properties. The burden will then be shifted to the landlords to find means, including utilization of this program, to discharge legal obligations which, in many cases, they have heretofore successfully evaded. Should these pressures exist, the landlord's alternatives to a loan under this program are not attractive. One option would be for him to seek private financing, but such financing would most likely be for a short term and at a high interest rate. Another alternative would be to withdraw the property from the housing market altogether. This involves possible loss to the landlord of equity he has in the building and might not eliminate potential legal liabilities resulting from ownership. Faced with these alternatives, a loan under the proposed approach should appear most prudent.

The situation for the homeowner will be somewhat different. The financing opportunities would be identical and the same extra period of debt service payments would be involved. Unlike the landlord, however, the homeowner would directly enjoy the benefits of the improved condition of the property. The inducement to voluntarily seek FHA-guaranteed refinancing would thus be much stronger. At the same time, outside pressures to refinance would be less effective. There would be no tenant pressure, and code enforcement officials would probably be less concerned about conditions of a building occupied by the owner than one rented to others.

The Repair and Improvement Industry

One factor cited for the limited success of the various programs for residential rehabilitation is the absence of a rehabilitation industry.⁵⁵ Most businesses are reluctant to risk their resources and money in this type of venture due to their inability to accurately predict the

54. See notes 12-13 *supra*.

55. See HUD Rehabilitation Study 7-8; *Hearings on S. 1354 Before the Subcomm. on Housing of the Senate Comm. on Banking and Currency*, 89th Cong., 1st Sess. 282-83 (1965).

feasibility and cost of a particular rehabilitation project, and to a dearth of knowledge as to efficient and effective means of implementing the various stages of rehabilitation.

The repair and improvement approach suggested herein would not suffer comparable hindrances. The work to be done will be of a more limited scale. Contractors will work predominantly with existing property owners and thus would have no need to assemble new risk capital. Difficulties involved in predicting costs could be minimized by not undertaking repair work on defects in which hidden expenses were likely to occur or by changing specifications when prohibitive hidden expenses were encountered. In addition, the numerous small home repair and improvement contractors would provide a ready and knowledgeable source of skilled labor. Those who have worked under the federal government's Title I Home Improvement Program⁵⁶ or under the Concentrated Code Enforcement program would already be familiar with the special requirements resulting from federal involvement.

Labor unions are unlikely to voice strong opposition to the program but may well insist that union wages be paid to all workmen involved, thus causing a cost increase. The work involved here, residential repair and improvement, is not one in which construction unions are now active, and it is possible that in some situations, repair and improvement work could be performed without paying union level wages.⁵⁷ Such situations would probably involve smaller jobs to which the prevailing federal wage requirement⁵⁸ is inapplicable. If the program were to be implemented on a wide scale, however, it is likely that the unions would insist upon strict enforcement of prevailing wage level requirements.⁵⁹

56. National Housing Act § 2, 12 U.S.C. § 1703 (1964), *as amended*, (Supp. V, 1965-69).

57. It is interesting to note that on February 23, 1971, the President suspended the operation of the Davis-Bacon Act's prevailing wage requirement, citing as his reason the emergency situation created by the spiraling construction costs which were primarily a product of inflationary wage settlements in the construction industry. See 36 Fed. Reg. 3457 (1971). That suspension has now been lifted and replaced with control boards with industry and union representation to oversee wage settlements in the construction industry. See 36 Fed. Reg. 6335, 6339 (1971).

58. National Housing Act § 212, 12 U.S.C. § 1715c (Supp. V, 1965-69), *amending* 12 U.S.C. § 1715c (1964).

59. The experience encountered in Philadelphia's used housing program indicates what could be expected to happen. Emerson & Spector, *The Rehabilitation of Houses for Low-Income Families: A Volume Production Achievement in Philadelphia 27-31* (Feb. 1969) (on file at the Nat'l Housing and Econ. Dev. Law Project, Earl Warren Institute, Univ. of Calif., Berkeley, Calif.). When the volume of work under that program increased, it attracted the attention of the construction unions and the failure to enforce prevailing wage requirements was promptly corrected.

A second problem relating to the influence of labor unions concerns em-

The Lenders

Institutional lenders considering whether to extend the needed loans will necessarily evaluate the risk of losses resulting from mortgagor default, the possible undesirability of owning deteriorated residential property if foreclosure should be necessary, and the disproportionately high costs of servicing small loans. The first two problems can be solved by the combined operation of the FHA guarantee and the utilization of the secondary mortgage market. The lender can thus make money available for a relatively short period of time, at little or no risk, and will receive a market rate return. The third problem of high costs involved in servicing small loans should not impede the program either, as most of the loans will refinance existing debts. The large majority of cases will deal with multi-unit structures; as a result, the loans for any particular project are likely to exceed \$15,000 to \$20,000 and thus not be so diminutive as to make it unattractive by reason of servicing expenses.

Whether adequate mortgage money is available for the program is a problem that remains. The question has two aspects: (1) whether money will be available for housing generally and (2) whether allocation of money to the proposed program would unduly limit money available for other housing programs. Certainly, the amount of mortgage money this program could absorb would be small compared to that involved in new construction or substantial rehabilitation of the existing housing stock.⁶⁰ The cost per unit would be considerably less than comparable per unit costs for other housing. The total money supply available for housing has recently increased, and may no longer be an effective constraint. New financing mechanisms, such as flexible interest rates and mortgage-backed securities and bonds, are being developed to attract more investment money to the housing sector.⁶¹ It thus seems reasonably clear that the availability of mortgage money would not be an obstacle to the proposal.

ployment and training opportunities for minority individuals and contracts for minority businesses. While unions may restrict the full extension of these opportunities, they cannot credibly claim that affording minority groups these opportunities will deprive union members of job opportunities they now have. Home repair and improvement is not commonly done by union workers. Moreover, in the neighborhoods in which these buildings will be located, community groups will insist that local residents get the jobs.

60. Most of the demand for residential mortgage money in this decade is likely to come from middle and upper income families, not from production for lower income families. See Housing and Urban Development Act of 1968, 42 U.S.C. § 1441a (Supp. V, 1965-69). In addition, of the mortgage money demanded by lower income housing, the other federal programs are likely to demand two to three times as much per unit as will be needed under this proposal. Thus, cost limits in the section 235 and 236 programs range from \$18,000 to \$24,000 and from \$9,200 to \$37,935 respectively, whereas the amount per unit under this program is unlikely ever to exceed \$10,000. See National Housing Act § 235(i) (3) (B), 12 U.S.C. § 1715z(i) (3) (B) (Supp. V, 1965-69). *Id.* § 221(d) (3) (ii), 12 U.S.C. § 1715l(d) (3) (ii) (Supp. V, 1965-69), amending 12 U.S.C. § 1715l(d) (3) (ii) (1964).

61. See Housing and Urban Development Act of 1968 § 804(b), 12 U.S.C. § 1721(g) (Supp. V, 1965-69); Government Nat'l Mortgage Ass'n, Mortgage Backed Securities Guide, GNMA 5500.1 (Dec. 1969).

FHA Processing

FHA processing adds significantly to the time required to effect production or rehabilitation of housing under many of the federal programs. This time lag can itself be a serious constraint to high volume production. Innovations, such as accelerated multifamily processing,⁶² have recently been adopted in a priority effort to solve this problem. While experienced developers can often complete FHA processing quickly, cumbersome application methods have discouraged many small property owners, who do not regularly deal with FHA, from utilizing its programs. In order to properly appraise the potential dangers of FHA delay and the attempt to resolve them, it is important to consider whether the unique characteristics herein involved could permit a substantial reduction of the FHA's role in the loan approval process.

FHA's role could be reduced by adopting a system similar to that used for Title I Home Improvement Loans.⁶³ Under the Title I program, the homeowner applies to a bank for a Home Improvement Loan. The bank reviews the application to determine whether the Title I program criteria are met. If the bank decides to extend the loan, it so advises FHA, but FHA plays no active role in the process. If the borrower thereafter defaults, the lender will recover its losses from the FHA under the loan insurance, provided that the loan met FHA requirements for the program. To prevent abuse or neglect by the lenders, insurance payments originally were limited to the extent of 20 percent of the loans made.⁶⁴

Whether a comparable scheme could be adopted for the proposed program should depend upon analysis of the decisions and activities with which FHA processing might justifiably be concerned. One would be the determination as to whether the loan is economically sound, or, more specifically, whether the property in question can be expected to produce sufficient revenue during the term of the loan to meet the debt service requirements and still provide sufficient return for the owner to discourage him from abandoning the building or selling out. Another appropriate area of concern might involve delineating the needed repairs and improvements to be made and supervising their distribution among the different units in a multifamily building. A third would be the determination that the repairs and improvements have actually been made and that the program in general is not being abused. Finally, FHA must be involved in the

62. See HUD, *Sponsor's Guide, Accelerated Multifamily Procedure*.

63. See 12 U.S.C. § 1703 (1964), as amended, (Supp. V, 1965-69); HUD, *Title I Operating Guide, FHAG 4600.1* (1969).

64. Federal Housing Administration, *Modernization Credit Plan*, Bull. No. 2, at 6 (1934).

collection of information needed for rent regulation.⁶⁵ These activities tend to indicate that FHA could adequately protect itself with minimal and uncomplicated processing procedures.

Lending institutions should determine whether the loan should be made and its terms. To require the FHA to repeat the process would result in undue duplication of effort. Some safeguards would, however, be needed to prevent lending institutions from making these insured loans without full regard to their economic soundness. One approach would be to provide that the FHA would not pay a claim on any loan which was demonstrably unsound at the time it was made and the approval of which was made without conformity to the institution's normal lending practices. The ambiguity of such a standard might, however, make lenders overly cautious and thus tend to inhibit widespread implementation of the program. An alternative would be to provide that a claim would not be paid by FHA if at the time claim was presented, more than 20 percent (in dollar terms) of the loans made by the lender in question had resulted in insurance claims. That standard would not relate to the actions taken on any particular loan and thus would not require the lenders to be overly cautious. At the same time, the lender would know that if it were not careful as a general matter, it would lose its coverage.

The above approach will be more complicated if the secondary mortgage market is involved. If the initial lender were certain it would not be the mortgagee at the time of default, the inducement to be careful would not operate. A possible remedy would be to make the FHA's determination whether a particular claim was payable depend upon the percentage of defaulted loans initiated by the original lender and not on the percentage held by the mortgagee making the claim. The purchaser of the mortgage, in turn, would be allowed to recover from the initiator any losses suffered because of refusal of the FHA to pay a claim relating to that mortgage.

The selection of the specific repairs and improvements should require little participation by the FHA. The primary decision makers would logically be the property owner, the tenants, and the local code enforcement officials. FHA participation would be necessary only to guard against inequitable distribution of the benefits among the units of a multi-unit property, possibly in an effort to favor the owner's apartment, in an owner-occupied situation, or the apartment of a relative or friend. The FHA could review the plans to see that the distribution of the improvements would be equitable.

Some checks will be needed to ensure that the work is actually performed, as there will be a strong temptation for property owners to use the program as a means of removing part of the equity of the property. To protect against this, the contractor and the owner should be required to certify, under penalty of perjury, that the work has

65. See text accompanying notes 37-42 *supra*.

been completed and that the reported charges were accurate and actually incurred, without kickbacks of any kind, as a condition to the release of any money by the lender.⁶⁶ The lender could similarly be required to certify that he had received the required certifications from the contractor and the owner before disbursing the money. Finally, this certification safeguard could be reinforced by random FHA inspections of the work certified as completed.

Under the framework of the program, FHA is required to collect information needed for rent regulation. Standardized forms could be adopted by FHA for this purpose and distributed to lending institutions. The property owner could gather the information himself and submit it to the lender, certified as correct under penalty of perjury. The lender could submit the information to FHA, certifying that it was complete. No action would be necessary from the FHA, other than accepting the documents, until the property owner applied for approval of a rent increase.

The role of the FHA in the approval process need be quite limited. In sum, the lender would notify the FHA that it intended to make a loan and submit a statement of the proposed work as well as a statement of rent regulation information. The FHA would appraise the property and make an estimate of the private financing available, if either were necessary. In addition, it would check the work plan to see that there was no inequitable distribution of the repairs and improvements among the various units. After the repair work commenced, the lender would disburse the money and receive the certifications that the work was completed as specified. The FHA would make only spot checks on the accuracy of those determinations.

Local Codes and Zoning

The impact of local codes and zoning regulations upon the proposed approach is difficult to assess because of the extreme variation of code requirements from jurisdiction to jurisdiction. An initial distinction must be drawn between housing codes prescribing minimum standards for health and safety, which apply to all buildings and building codes, and those which generally apply only to new construction or to the substantial repair or alteration of existing buildings. The impact of zoning regulations must also be considered. This threefold distinction, although useful for analysis, may be misleading in view of the overlapping nature of the several code categories and the wide variation in the patterns existing in various cities.

In general, the proposed program would require compliance with

66. See 18 U.S.C. § 1010 (Supp. V, 1965-69), amending 18 U.S.C. § 1010 (1964).

applicable housing codes. Because housing code requirements are generally intended to protect health and safety and apply to all existing residential buildings, they are less rigorous than those applicable to new construction. Two to three thousand dollars per unit should be sufficient to cover the cost of bringing most buildings into compliance with these minimum requirements. Waivers should be obtained from local officials or appeal boards, with respect to any housing code requirements which do not substantially affect health and safety, if the cost of compliance would be prohibitive or the expenditure otherwise unreasonable.

The maximum occupancy standards of most housing codes could cause difficulties for those living in overcrowded buildings. Compliance with the occupancy standards would result in dislocation of some residents, for whom there may be no alternative housing available. Such dislocation would further constrict the market and would mean higher rents per occupant for those who remain. To avoid these adverse consequences, waivers of the maximum occupancy requirements should be sought. The proposed approach should not condition program eligibility on compliance with the maximum occupancy requirements.

In general, building codes do not require that old buildings be brought up to the standards of the latest codes. Any repairs and improvements effected, however, usually must comply with the latest code standards, but there are exceptions. Under some codes, for example, minor non-structural repairs, alterations, or additions may be made with materials equivalent in strength and fire resistance to the materials with which the buildings were originally constructed, even though these do not meet the latest requirements.⁶⁷ A remaining question is whether the making of repairs and improvements to parts of a particular system or building requires that the whole system or building be brought into compliance with the latest building code requirements. For repairs and improvements on the scale contemplated for the proposed approach, the answer will most often be no. The usual criterion is whether a substantial portion of the system is to be repaired or the cost of the improvements will exceed a certain percentage of the replacement value of the building.⁶⁸ In most situations this not likely to be the case.

The buildings codes will, however, pose special problems where previous alterations or repairs to the building were made in violation of the building code requirements applicable at that time and thus must be legalized before a permit can be issued for new repairs and improvements. In some cases the past work will not be detected by the inspectors, especially if it was done with good workmanship and

67. See Uniform Bldg. Code of the Int'l Conference of Bldg. Officials, § 104(d) & (e) (1967).

68. See, e.g., Abridged Bldg. Code of the Bldg. Officials Conference of Am. § 106.3 (1961); Chicago Bldg. Code § 78-8.7; Uniform Bldg. Code of the Int'l Conference of Bldg. Officials § 104(b).

materials. If the work were detected but was satisfactory, it would commonly be possible to secure a permit retroactively legalizing the earlier work.⁶⁹ The standards for issuance of such a permit will usually be those applicable at the time the work was done, although a penalty might be imposed for the original failure to secure a permit. If the work were detected and was of a dangerous nature, it probably would have to be corrected, but such corrective action would be consistent with the objective of this proposal.

Zoning ordinances are likely to produce difficulties in only two situations. The first would occur in relation to buildings which are deemed legal non-conforming uses. Such situations might develop if, for example, the building to be repaired under the program was a relatively high density structure but situated in a lower density residential area or if it was a residential building situated in a commercial or industrial area. The common policy as to non-conforming building use rests on anticipation that, over time and with increasing age, the buildings will be demolished. Efforts to extend their useful life may therefore run afoul of the purposes and provisions of the zoning ordinances. Work done under the proposed approach is not likely, however, to conflict with the policies or requirements of zoning ordinances. Repairs needed to maintain a non-conforming structure in safe condition are commonly allowed, up to a certain percentage of the replacement value.⁷⁰ Zoning laws are also likely to contain special exceptions for work done on non-conforming structures, when required by the applicable health and safety codes.

Buildings in which alterations have been made in violation of the local zoning codes present a second problem. An illegal conversion of a single-family residence into a multi-unit building would be an example. In that case, it is possible to legalize the units by securing a special exception or variance.

Temporary Relocation

The problem of temporary relocation of tenants while repairs and improvements are carried out can obviously be avoided if it is possible to do the work with the tenants in residence. Some past attempts to do this in connection with rehabilitation have proved troublesome.⁷¹ Unpleasant living conditions in an apartment being rehabili-

69. See, e.g., Uniform Bldg. Code of the City of Berkeley § 303(a); Oakland Electrical Code § 9-3.15; Bldg. Code of the City of St. Louis § 2126.4; Uniform Plumbing Code of the Western Plumbing Officials § 1.13.

70. See, e.g., National Institute of Municipal Law Offices, Model Zoning Ordinance § 11-209(a) (1) (1954).

71. See Department of Housing and Urban Dev., *An Analysis of Twelve Experimental Housing Projects* 66 (1969); *Private Ventures Into Slum Building Rehabilitation for Low-Income Families*, 34 J. OF HOUSING 27 (1967).

tated has been one problem. Time is lost and costs increase when the workmen have to work around the possessions of the tenants. Claims by the tenants for damaged or stolen possessions, whether actual or falsified, create difficulties.

Most of the difficulty encountered in the major rehabilitation projects will not be present under the proposed approach. There will be no problem of rent increases causing tenants to lockout the workmen. The work will usually be more limited than in prior rehabilitation efforts and can often be scheduled so that vacant apartments are repaired first and the occupants of other apartments move in upon completion of the work. The proposed program should leave the matter of temporary relocation to the determination of the property owner, the tenants and others directly involved.

The usual causes of permanent displacement will not be present in the proposed approach. The number of available units in the buildings will not be reduced. Waivers of maximum occupancy requirements will be sought. Rent increases will not be permitted. No one will be forced to move out of his home.

Property Tax Revaluation

The question here is whether, as a result of the repairs and improvements, the assessed valuation of the property will be increased and thus increased rents will be required to pay the higher taxes. Such revaluations can and should be avoided. Most taxing authorities allow property owners to make substantial repairs, such as installation of a new roof, without facing a reassessment.⁷²

There ought to be no reassessment under the proposed approach, however, even if a complete modernization of the building is achieved. The actual value of the property as improved may not exceed the previous assessment either because of the overriding effects of the general neighborhood conditions, or because the existing assessment was too high, a common occurrence in slum property where assessed values have not followed declines in market value. In addition, if reassessment is based on income producing capacity, the imposition of rent regulation will offset the impact made by the improvements. Local initiatives might also be encouraged to provide an informal moratoria on reassessment, as frequently happens during urban renewal rehabilitations.⁷³ Finally, statutes might allow for tax abatement or at least bar reassessments in rehabilitated areas for repairs and improvements made under the proposed approach.⁷⁴ The present research of the *Use of Property Taxes to Promote Re-*

72. See Sumitomo Bank of Calif., Tax Free Home Improvement List of 1968; Gergen, *Renewal in the Ghetto: A Study of Residential Rehabilitation in Boston's Washington Park*, 3 HARV. CIV. RIGHTS-CIV. LIB. L. REV. 243, 275-76 (1968).

73. See Gergen, *Renewal in the Ghetto*, *supra* note 72, at 283.

74. See generally Department of Housing and Urban Dev., Request for Proposal No. H-38-70, at 16 (1970).

habilitation and New Construction, now under study by HUD, will shed more light on the impact of property taxes and means to limit their negative effects.

Conclusion

A long-term solution to the problem of deteriorated housing, inter-related as that problem is to the myriad and complex social and economic issues of poverty, welfare, employment, health, education, etc.—will necessitate a multi-faceted approach. As was emphasized at the outset, it will have to ensure, through some system of subsidy, the continuing availability of sufficient funds to cover operating and maintenance costs and to reduce the heavy burden of high rents in relation to income under which the poor now suffer. It is essential that Congress and the government agencies involved come to recognize the necessity of reviving and sustaining existing housing units, where the intended beneficiaries of the country's housing programs presently live.

The approach proposed in this article recognizes that the crisis is now, and offers a means of providing interim, but immediate, relief on a broad scale. The legislation needed to put the proposed program into effect should not be deferred pending field or pilot projects and demonstrations. We cannot afford the two or three years delay that would be required to organize, implement, and evaluate a full-scale testing program. Nor is such a demonstration period reasonably required. The proposed project is entirely voluntary in character. No property owner would be required to apply for an insured loan. No adverse effect will result from its immediate implementation. Only full experience under the program will demonstrate its effectiveness and determine the areas in which modification is needed. Appropriate legislation must be enacted and implemented at the earliest possible time.

AMERICAN FRIENDS SERVICE COMMITTEE INC.

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July 27, 1973

Honorable John J. Sparkman, Chairman
Subcommittee on Housing & Urban Affairs
United States Senate
Washington, D. C. 20510

Dear Senator Sparkman:

We are pleased to know that the Housing Subcommittee is now undertaking a review of pending housing legislation. We hope that the Committee will find our comments useful and helpful, and that they can be made part of the record of your hearings.

The American Friends Service Committee is currently involved in efforts to assist low income families to improve their housing conditions both in rural areas and on the urban scene. On the basis of these efforts, we can say categorically that the need for new, adequately funded housing programs which are genuinely responsive to consumers is of compelling urgency.

We are distressed at the depth and extent of misconceptions about housing needs and housing programs. The facts are that what the federal government has spent on housing subsidies is only a fraction of federal spending in such areas as farm price supports, highway construction, health, or education. Moreover, the great bulk of housing subsidies have not been for low income families, but rather for those who are able to deduct mortgage interest payments and local property taxes from their income tax returns.

We find it ironic that the administration will suspend subsidized housing programs for failing adequately to serve the poor, while allowing tax subsidies, which increase as income rises, to continue unchallenged and unquestioned.

We urge that the subcommittee frame its legislation on the basis of what is really needed to solve our housing problems and achieve the long-enunciated national goal of "a decent home and a suitable living environment for every American family." To do this, we believe that there are a number of fundamental principles which should be recognized. These are set forth below, followed by comments on several of the specific proposals which are before you:

1. People do not live in poor housing by choice, but because of lack of income and lack of choice.
2. Public programs in housing have been shaped largely by providers, not by consumers. The federal government has been the prime mover in housing since

adoption of the National Housing Act in 1934. What the federal government has or has not done have largely shaped the building industry and the housing market during this period.

3. The active and passive support which government has given to the dual housing market has been in large degree responsible for the polarization in this country between black and white, rich and poor, urban and suburban.

4. By and large middle and upper income Americans have received housing subsidies and assistance as a matter of right, while lower income people have been dispensed a trickle of the necessary subsidies as a matter of privilege. Those programs which viewed housing as a right have generally functioned successfully. Those regarding housing as a privilege -- public housing, other subsidized housing, urban renewal, etc. -- have generally been project oriented and plagued with problems.

5. Current housing goals are totally inadequate. To make up for past neglect, we should consider a program to replace over a ten-year period almost all of the housing now occupied by the 15 million families with incomes below \$4,000 in 1970. This would require a production rate for low income housing, with subsidy equivalent to public housing, of 1.5 million units per year.

6. The federal government should bear primary responsibility for providing the programs and resources necessary to meet these housing needs. Only the federal government can provide equal housing opportunity throughout the land. The fact that it has not yet done so is reason for multiplying efforts, not abandoning them.

7. The present freeze on housing programs should be lifted immediately.

8. Adequate, effective housing programs depend on adequate income, development of new institutions for delivering and managing housing, and top priority for those in greatest need -- generally the poorest -- and flexible and adequate subsidies.

This, then, is the framework of our concern and recommendations. We hope that the Subcommittee will draft a bill which goes considerably further than any of the pending proposals. In so doing, we hope that careful consideration will be given to the concept and approaches embodied in S.2190, the proposed "Emergency Rural Housing Act of 1973;" in S.971, "the Home Preservation Act of 1973;" in S.2169, providing for direct financing of low and moderate income housing programs, and to proposals for expanding the public housing program.

Because the housing needs of lowest income people are the most critical of all housing needs, we urge that any programs adopted contain provisions for adequate operating subsidy. The criterion, in our view, should not be the "economic soundness" of any particular project but rather the economic soundness, from the consumer point of view, of the amount charged for shelter. Thus, we oppose the provisions of Section 201 of S.2182 which require a minimum rent in public housing and which would repeal important portions of the Brooke Amendment. We urge, instead, that the Brooke Amendment in its present form be continued as a central

feature of public housing. In addition, we think serious consideration should be given to extending these provisions to other subsidized housing, and to providing the necessary operating subsidies. Under the Brooke Amendment, for the first time, families could be housed at costs which bore some relationship to the amounts which they could afford.

We urge that major and continuing attention be given to rural housing needs. S.2190, the Emergency Rural Housing Act, seems to us to provide the basis for a beginning. Simultaneously, we urge that the subsidized direct loan and grant programs be continued. We urge that legislation be adopted which would permit borrowers to place tax and insurance payments in escrow accounts, as is done under FHA programs. We strenuously oppose proposals calling for use of fee appraisers and inspectors, rather than Farmer's Home staff. It is imperative that Farmer's Home staff be expanded, not curtailed.

We urge that discrimination on the basis of sex be prohibited.

Finally, we wish to express our grave concern about proposals to deal with housing or community development through special revenue sharing. Our experience over four decades in housing and other areas has convinced us that local governments are more often part of the problem than they are of the solution. This is particularly true where the potential exists for discrimination against minorities or poor people. The Administration's proposed "Better Communities Act" arouses our concern in three areas: the proposed abdication of federal responsibility for the substance of community development, the abandonment of any meaningful requirement for citizen participation, and the exclusion of rural areas from the funds provided.

We hope that the above comments are helpful to you, and we would be happy to appear before the subcommittee to discuss them, if you request. We attach, in addition, the comments which we submitted to HUD for their consideration as they review housing programs.

Sincerely,

Cushing N. Dolbeare

Cushing N. Dolbeare
Community Relations Division

CND:ls

Attachment

Memorandum for Housing Policy Review Team,
Department of Housing & Urban Development

cc: Senator William Proxmire
Senator Harrison A. Williams
Senator Alan Cranston
Senator Adlai E. Stevenson, III

Senator John Tower
Senator Edward W. Brooke
Senator Bob Packwood
Senator Robert Taft, Jr.
Carl A. S. Coan

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MEMORANDUM

FOR: Housing Policy Review Team
c/o Assistant Secretary for Policy
Development and Research
Department of Housing & Urban
Development, Room 4102
Washington, D. C. 20410

FROM: National Community Relations Division,
American Friends Service Committee

SUBJECT: Response to Request for Comments and Information for use in Review and
Evaluation of HUD Programs (Federal Register, April 5, 1973).

The American Friends Service Committee wishes to respond to the general request for comments and information for use in HUD's evaluation of federal housing programs.

We do so from the perspective of almost four decades of involvement in pioneering and experimental efforts to cope with critical housing needs. These began with housing and community development efforts in Appalachia in the 1930's. The American Friends Service Committee has participated in the initiation and development of self-help housing, in the development of the fair housing movement, and in the organization of the national tenant movement.

Presently, our active housing programs include an effort in Florida to assist migrant families to obtain decent shelter so that they can leave the migrant stream, an effort in Elizabeth, New Jersey to assist families being displaced by urban renewal, a similar effort in Portland, Oregon, and the development of an institutional framework for tenant control of housing in Chicago.

THE HOUSING CRISIS

The symptoms of the housing crisis are visible in every American city and every rural area: Dilapidated or abandoned houses, a danger to life and health. Poor schools, poor transportation, poor community facilities, and, above all, poor people. Neighborhood that is not community. Alienation and hopelessness born of lack of opportunity and discrimination on the basis of race, creed, color, educational status, or income.

Too often, the symptoms are regarded as the causes. Housing conditions are blamed on apathy, on poverty, on lack of maintenance, or, frequently, on the greed of the owners.

The facts are that the housing crisis is an institutional one. We have not yet in our society decided to provide all people the opportunity to support themselves in dignity and decency. We have not yet decided to provide adequate education for all. We have not yet decided to provide jobs, or maintain incomes where opportunity for employment is lacking. And, most important from the viewpoint of housing, we have not yet decided that the housing crisis constitutes a challenge to public action on a major scale.

Public efforts to deal with the housing crisis have been half-hearted, penny-wise and pound-foolish. Private efforts have been frustrated by the lack of resources necessary to provide decent housing at cost which low and moderate income families can afford.

In 1949, Congress enacted a comprehensive housing law, stating the national goal of providing "a decent home and a suitable living environment for every American family." Part of that goal was to be the construction of one million public housing units during a 10-year period. We are still awaiting the millionth public housing unit, and the program has now been suspended.

An even clearer idea of the shameful inadequacy of public expenditures on housing is the fact that if one adds up all of the federal housing and community development expenditures from 1937 through the present year, one finds the total of about \$30 billion is one-third of the expenses on agriculture -- primarily farm price supports -- and one-fourth of federal spending on highways and transportation, during the same period. It is less than 1/2 of the expenditures on health since 1960, and a small fraction of this year's defense budget.

A continuing thread through the variety of AFSC's housing efforts and involvements has been the fact that people do not live in poor housing by choice. Rather, the existence of poor housing is a reflection of lack of income and lack of choice. Given an opportunity, low income and minority people, who are presently excluded from participation in housing programs and who are forced to live in inadequate housing will make tremendous efforts and sacrifices to improve their housing conditions.

Yet, perhaps more in housing than in other fields, public programs have been developed not by those whom they ostensibly serve, but by the providers of housing: builders, bankers, architects, planners, real estate people.

We urge most strongly, as housing programs are restructured, that these defects be cured. The beginning steps which have been taken in federal programs, such as public housing and urban renewal, to provide opportunities for citizen and tenant participation must not be swept away but rather built upon and expanded.

THE CURRENT ROLE OF GOVERNMENT IN HOUSING AND HOUSING FINANCE

The federal government has been the prime mover in housing since adoption of the National Housing Act in 1934. What it has done and, perhaps even more important, what it has not done have largely shaped the building industry and, to a lesser degree, the real estate market.

Well over half of the nation's housing stock has been built during this period of federal involvement, which has been accurately characterized by Charles Abrams as "socialism for the rich, free enterprise for the poor."

Discrimination and Segregation

The framework of governmental policies and programs, from FHA on the federal level to exclusionary zoning and building codes on the local level, has been responsible for the development and continuation of a dual housing market: one for whites with the wherewithal to purchase new housing and the other for poor and minority people. The active and passive support which government has given to this dual market has been in large degree responsible for the polarization in this country between black and white, rich and poor, urban and suburban. Had it not been for residential segregation, we would have school integration without bussing, more equal access to employment opportunities, and little occasion for racial or class isolation.

The federal government actively fostered discrimination as public policy until only a few years ago. It nominally adopted, with Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968, the responsibility for affirmative action to eliminate discrimination and remedy the effects of past discrimination. But efforts to do this have been half-hearted at best. It was three years after adoption of the 1968 fair housing legislation before the federal government issued any affirmative requirements. These requirements continue to be weak, largely unenforced, and in some instances, such as the project selection criteria, operate to compound the problems of those whom they are presumably assisting.

Housing As A Right Or As A Privilege

A continuing dichotomy in the government's role in housing is between the concepts of housing as a right and housing as a privilege. By and large, middle and upper income Americans have received housing subsidies and assistance as a matter of right, while lower income people have been dispensed a trickle of the necessary subsidies as a matter of privilege. Thus, FHA and VA insurance, available to all who would qualify, assisted millions of middle class white Americans to purchase new suburban housing. Federal tax subsidies, which amount to more than three-quarters of all federal housing subsidies, are available to all who itemize their individual income tax returns, and increase as the amount spent on mortgage interest and property taxes rises. Small wonder, then, that 55% of all housing subsidies go to households with incomes above \$10,000 while less than 8% go to low income families with critical housing needs.

The housing programs which have functioned fairly successfully on a broad scale have been those which viewed housing as a right and which were generally available to all who qualified. Those regarding housing as a privilege -- public housing, other subsidized housing, urban renewal, etc. -- have generally been project-oriented and plagued with problems. The recognition of need for change and

greater flexibility in the last few years has been helpful. However, when the shift has been made, it has been grudging and inadequate, both in scope and funding.

Current Housing Goals Are Inadequate

The federal housing goals developed late in the 1960's are, in our view, totally insufficient. The proportion of subsidized units is based on replacement of existing substandard units -- a laudable but limited objective -- rather than the proportion of units which would need to be subsidized if everybody, including low income people, were to be provided with equal housing opportunity in terms of access to new housing. Relying largely on the filtering process to house low income people is just another way of victimizing poor people. In order to provide equal opportunity, subsidized housing goals should be set in relationship to people's ability to pay for new housing. If we were henceforward to adopt this policy, one-quarter of all housing production should be in the income range now served by public housing -- for households with incomes below \$4,000 per year -- and somewhat more than one-third should be in the income range served by 235, 236, and Farmers Home Administration programs. These should be minimum goals. To make up for past neglect, we should at least consider a program to replace, over a 10 year period, almost all of the housing now occupied by the 15 million households with incomes below \$4,000 in 1970. This would require a production rate for public housing, or equivalently subsidized housing, of 1.5 million units per year.

Particular importance should be given to meeting the critical housing needs of the one-eighth of our population with incomes below \$2,000 per year. Leaving quality aside, there is an absolute gap or shortage of almost 3 million units within the economic reach of these families.

RENTAL HOUSING COMPARED TO TENANT INCOME, 1970

<u>Income Class</u>	<u>Tenant Households</u>	<u>Number of Housing Units at Rents Equal to 25% of Income</u>	<u>Gap or Surplus</u>
Under \$2,000	3,900,000	1,000,000	-2,900,000
\$2,000-2,999	1,900,000	2,200,000	+300,000
\$3,000-3,999	1,800,000	3,300,000	+1,500,000
\$4,000-4,999	1,700,000	3,600,000	+1,900,000
\$5,000-5,999	1,800,000	3,800,000	+2,000,000
\$6,000-6,999	1,800,000	2,700,000	+900,000
\$7,000 and over	13,000,000	8,200,000	-4,800,000

Source: estimated from tables A-2 and A-3 of Metropolitan Characteristics, United States and Regions (HC-2-1), 1970 Census

The gap at the bottom means that families with incomes below \$2,000 must generally pay far more than 25% of income for rent; indeed, almost 2/3 pay over 35%. The gap at the top means that families with incomes over \$7,000 pay less than 25% for rent. Note that the cumulative gap would be 2.6 million units at \$3,000 income and 1.1 million units at \$4,000.

Lack of Information on Real Housing Needs

AFSC field experience leads us to believe that the current role of government in housing is based, to a large degree, either on misinformation or on lack of information. The 1970 Census did not even include information on housing quality. This, we understand, is because the 1950 and 1960 information is regarded as "unreliable." Thus, the number of housing units lacking plumbing facilities tends to be equated with substandard housing, for lack of a better measure. Yet, as we know from Chicago, Portland, Elizabeth, and elsewhere, this is a totally inadequate measure. On this basis, one would conclude that many of unlivable urban neighborhoods -- those being abandoned as rapidly as possible by all who can escape -- have relatively little substandard housing. Only 7.1% of housing in The Woodlawn area in Chicago, for example, lack plumbing facilities. Widespread and critical housing needs are evident in each of the 30 locations in 25 states where AFSC has active community relations programs. They are evident in rural settings, in large urban centers, and in smaller cities. It seems inconceivable to us that the federal government should be unable to quantify and estimate these needs.

Impact on Poor People

Few seem to realize that low income people pay far more, proportionately, for housing than do others. Seven out of ten families with incomes below \$2,000 pay more than 35% of that meager income for rent. In 1970, the median rent paid by households with incomes below \$2,000 was \$79 monthly. Thus, a family with an income of \$2,000 would pay \$948 annually for rent, leaving \$1,052, or \$88 per month for all other needs. This is less than three-quarters of the minimum amount which the official poverty estimates conclude is needed by a family of four for food alone.

In contrast to the critical housing needs of very low income families is the present pattern of housing production. In 1972, 64% of all housing production was priced to serve households with incomes above \$10,000. Only 3% served households with incomes below \$4,000. If these rates continue, we will be providing new housing for the 25 million families with incomes above \$10,000 in 14 years but it will take 179 years for the 15 million families with incomes below \$4,000 to receive new housing.

Producers Benefit From Current Programs

Finally, the current role of the federal government in subsidized housing has largely benefited the producers, rather than the consumers of housing. Thus, as

the General Accounting Office has well documented, interest subsidies cost considerably more than would federal direct loans. The average subsidy per unit for some forms of moderate income housing equals or exceeds the average per unit subsidy for public housing. Federal rhetoric seems to have shifted from production to management and operating considerations. We hope that this review will result in a further shift of both rhetoric and action toward programs directed to real housing needs.

WHAT THE ROLE OF GOVERNMENT SHOULD BE IN HOUSING AND HOUSING FINANCE

The American Friends Service Committee believes that the federal government has a primary responsibility to assure all people fair access to the resources and services required to meet their basic needs. These include, in addition to adequate housing, access to adequate food, health care, education, child care, transportation, legal services, protection of the environment, together with opportunities for meaningful work or assured income if unable to work.

This responsibility must be federal, in order to provide equity, efficiency, and adequacy regardless of location.

A large part of our community relations work is in the direction of new institutions and shared power relationships to provide for these basic needs. We are not, therefore, advocating monolithic and bureaucratic federal programs. Rather, we are urging federal provision of the necessary resources, coupled with provision for participation of those presently excluded from the decision-making process in devising and operating the institutions which deliver housing, health care, and other services for which the federal government is or should be responsible.

Local Governments Are Not Responsive

We view the present emphasis on general and special revenue sharing and a larger role for state and local government as steps away from responsiveness, rather than toward it. Only the federal government can guarantee civil rights throughout the land. The fact that it has not yet done so is reason for multiplying efforts, not abandoning them.

AFSC has had continuing, and bitter, experience with the role of local government role in housing. This has largely been negative. Local governments, almost without exception, are resistant to efforts to provide new housing for low income people. Thus, in Florida, AFSC and groups with which we work have been involved in petitioning 6 local governments in Palm Beach County to permit rent supplements: 4 refused, 2 approved. Yet there are almost 16,000 families in Palm Beach County with incomes below \$4,000.

We have also endeavored to persuade Boca Raton, Boynton Beach, Lake Worth and other local governments to establish housing authorities. Even where there have been formal findings of need for such housing by the local government, not one has acted

to establish the housing authority and provide public housing. In Del Ray Beach, Florida, our efforts to develop housing for farmworkers were stymied by the refusal of the city to provide connections to the public water and sewer systems. In South Bay, a freeze was ordered on all new building permits when it became known that sites and subsidy approval had been obtained for low income housing.

Federal programs have been responsive to these local objections, not to the needs of community residents, which have been ignored by local governments to an even greater degree than they have been left out of federal programs.

We are now faced with the ironic situation that suburban communities, in addition to being able to exclude housing within their own borders, can frustrate the provision of housing in neighboring communities because of the operation of HUD's Project Selection Criteria. Thus, in metropolitan areas where suburban communities refuse to accept subsidized housing, HUD will not approve it in central cities either.

Federal Commitment Needed

It is critical that the federal government make a commitment to provide adequate subsidies for low income housing. In addition, federal support is needed to develop viable local delivery systems. It takes money and staff to establish and operate locally based housing development and management corporations. Based largely on our experience in Florida, the AFSC has estimated, for example, that full time local staff is necessary to enable local people to take advantage of existing housing programs. As these programs are expanded, additional staff will be needed.

Inadequate as present housing programs are, they are considerably better than nothing. We urge, therefore, that the present freeze on housing programs be lifted immediately. It is no answer to community groups which have been working for months or years to launch small-scale subsidized housing projects to be told that the moratorium does not affect them because the pipeline is full. It may, indeed, not affect builders and housing producers. But it does affect housing consumers -- most particularly those who have worked to make their dreams a reality.

CHANGES IN POLICY AND PROGRAMS NECESSARY TO ACHIEVE THE APPROPRIATE ROLE OF GOVERNMENT IN HOUSING

Adequate Income Is Basic

Housing needs and programs cannot be considered in a vacuum. To a large degree, poor housing is a product of poverty. The remedy, as we see it, is not housing allowances which will further subsidize housing producers and offer little protection to tenants, but rather a basic redistribution of income and wealth. It would be impossible to meet our housing needs as long as the wealthiest 10% of our families not only receive 29% of all income but own over 56% of national wealth, while the poorest 10% receive only 1% of income and owe more than they own. This heavy con-

centration of wealth perpetuates and aggravates other inequities in the distribution of income, opportunity, and power.

Thus, tax reform to prevent the passing of large amounts of wealth from generation to generation will, in the long run, minimize the need for housing subsidies. In the short run, an adequate income maintenance program is more critical. We have long recognized that adequate income is an essential component of social policy and have urged a federal income maintenance program at the level of \$6,600 per year for a family of four. Such a program, coupled with access to credit for maintenance and rehabilitation, would in all probability provide a viable base for use of the existing housing stock to provide decent housing for low income people. Subsidies would still be needed, however, to provide poor people with new or rebuilt housing.

Need For New Institutions

Experimentation and support for new institutional arrangements is required to make housing programs responsive to people with housing needs, not to builders, bankers, and real estate brokers. Our preliminary work in Chicago on the development of institutions to bring housing under the control of its occupants indicates that substantial funding and subsidies are required. Thus, in order to provide for establishment of a tenant management corporation, a rehabilitation service, a trust to hold properties which private owners no longer wish to retain, and supporting legal and other services, we estimate, for a citywide program, a budget of at least \$3 million annually in addition to direct expenditures needed to maintain or rehabilitate the housing units themselves. We urge that the federal government include in its new housing program funds for experimentation with various alternative ways of achieving tenant or community control of housing.

The rapid rate of housing abandonment in almost every major American city indicates that the private absentee ownership of low and moderate income rental property is no longer viable. This provides an opportunity, we think, for the development of new institutions. But, because local governments have been generally unresponsive to the needs of poor people, we urge that these new institutions be created through direct federal assistance to community based organizations, such as housing and community development corporations. To fail to do so would be abdication of federal responsibility to see that the housing needs of poor and minority people are met in ways relevant and acceptable to theirs.

Priorities: Poorest Should Come First

Federal priorities for programs and funding need to be reversed, so that the needs of lowest income families are dealt with first, not last. While the last five years have shown an substantial increase in the proportion of new housing production which is subsidized, the largest increases have been in housing for moderate income people, and public housing itself is now being ordered by HUD to exclude the very poor in favor of an "income mix." Instead of meeting some housing needs in little more than a decade, and waiting almost two centuries to house poor

people, we should set as a minimum goal of national policy meeting all needs, regardless of income, within this century.

If the Federal Government is adequately to meet its responsibilities for housing, it must have the power to provide housing when and where it is needed, regardless of the objections of state and local government where these objections are based on discrimination against poor or minority people. In our experience, this has almost always been the case. Indeed, the burden of proof that restrictions do not result in discrimination should be placed on local and state governments, rather than the other way around. Only if this is done will we be able to begin to remedy the effects of past discrimination in housing.

Also, in relationship to state and local governments, the federal government should, in our view, strengthen its role to see that the rights of citizens are protected. For example, in Portland, Oregon we have actively been working with a group of residents displaced by a renewal project in the Model Cities area. Not only have promises to replacement housing not been fulfilled, but it now turns out that 200 families have been moved to make way for a hospital expansion which had not been funded and now, apparently, will not be funded because of the suspension of the Hill-Burton Act. In our view, the federal government should not have approved and funded this project without accompanying means of assuring that the rights and interests of these displaced people would be protected.

Flexible Subsidies

Finally, we urge careful consideration of the development of flexible means of federal housing subsidies - so that they are available where and when needed. One of the major limitations of previous subsidy programs has been the "all or nothing approach" where funds were available for new or essentially rebuilt housing, but not for major repairs or maintenance necessary to make existing housing units more livable. Community-based housing development corporations and tenant organizations need access to subsidies for operations and improvements on a continuing basis.

CONCLUSION

This is a time to move forward meeting our housing goals, not to retreat or permit the substitution of state and local inactivity for federal inadequacy.

We urge that HUD, in its re-evaluation of federal housing programs, set itself the goal of meeting all our housing needs by 1978, and design programs to meet those needs. We agree that present programs have been inadequate in many ways, and that they can be improved. We also believe that the only way decent housing will be provided to all at costs they can afford is for the federal government to affirm its responsibility to see that decent housing, with adequate subsidies, is provided in central cities, in rural areas, and in the suburbs. We are confident that programs with adequate subsidies can be designed and implemented. Basic is recognition that responsiveness to all citizens has been more characteristic of federal than of state and local government, and that federal programs,

to be responsive, must rest on participation by those directly involved, rather than by other levels of government.

Cushing N. Dolbeare

April 30, 1973

CND:ls

APPENDIX

Bills

STATEMENTS FROM REGULATORY AGENCIES

93^D CONGRESS
1ST SESSION

S. 12

IN THE SENATE OF THE UNITED STATES

JANUARY 4, 1973

Mr. WILLIAMS introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To amend title VII of the Housing Act of 1961 to establish an Urban Parkland Heritage Corporation to provide funds for the acquisition and operation of open-space land, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) title VII of the Housing Act of 1961 is amended
4 to read as follows:

5 "FINDINGS AND PURPOSE

6 "SEC. 701. (a) The Congress finds that—

7 "(1) the rapid expansion of the Nation's urban
8 areas and the rapid growth of population within such
9 areas has resulted in severe problems of urban and

1 suburban living for a substantial majority of the Nation's
2 present and future population, including the lack of
3 valuable open-space land for recreational and other
4 purposes;

5 “(2) there is a need for additional parks and other
6 open space in the built-up portions of urban areas,
7 especially in low-income neighborhoods and commu-
8 nities, and a need for greater and more coordinated
9 State and local efforts to make available and improve
10 open-space land throughout entire urban areas;

11 “(3) there is a need for timely action to preserve
12 and restore areas, sites, and structures of historic or
13 architectural value so that these remaining evidences of
14 our history and heritage are not lost or destroyed through
15 the expansion and development of urban areas; and

16 “(4) the welfare of the Nation and the well-being of
17 its citizens require substantial expansion of the scope and
18 level of Federal assistance for the development and
19 preservation of open space lands.

20 “(b) It is the purpose of this title to help control urban
21 sprawl by assisting States and local governments in develop-
22 ing a balanced urban environment, to prevent the spread of
23 urban blight and deterioration, to encourage more economic,
24 environmentally sound urban development, to assist in pre-
25 serving areas and properties of historic or architectural value,

1 and to help provide necessary recreational, conservation, and
2 scenic areas by assisting State and local public bodies in tak-
3 ing prompt action to—

4 “ (1) provide, preserve, and develop open-space land
5 in a manner consistent with the planned long-range
6 development of the Nation’s urban areas;

7 “ (2) acquire, improve, and restore areas, sites, and
8 structures of historic or architectural value;

9 “ (3) develop and improve open-space and other
10 public urban land, in accordance with programs to en-
11 courage and coordinate local public and private efforts
12 toward this end; and

13 “ (4) operate and maintain open-space and other
14 public land in a manner which best meets the needs of
15 the residents of that State or locality.

16 “DEFINITIONS

17 “SEC. 702. As used in this title—

18 “ (1) The term ‘open-space land’ means any land located
19 in an urban area which has value for (A) park and recre-
20 ational purposes, (B) conservation of land and other natural
21 resources, or (C) historic, architectural, or scenic purposes.

22 “ (2) The term ‘urban area’ means any area which is
23 urban in character, including those surrounding areas which,
24 as determined by the Corporation, form an economically and
25 socially related region, taking into consideration such factors

1 as present and future population trends and patterns of
2 urban growth, location of transportation facilities and sys-
3 tems, and distribution of industrial, commercial, residential,
4 governmental, institutional, and other activities.

5 “(3) The term ‘State’ means any of the several States,
6 the District of Columbia, the Commonwealth of Puerto Rico,
7 and the territories and possessions of the United States.

8 “(4) The term ‘local public body’ means any public
9 body (including a political subdivision) created by or under
10 the laws of a State or two or more States, or a combination
11 of such bodies, and includes Indian tribes, bands, groups, and
12 nations (including Alaska Indians, Aleuts, and Eskimos) of
13 the United States.

14 “(5) The term ‘open-space uses’ means any use of
15 open-spaced land for (A) park and recreational purposes,
16 (B) conservation of land and other natural resources, or
17 (C) historic, educational, architectural, or scenic purposes.

18 “(6) The term ‘Corporation’ means the Urban Park-
19 land Heritage Corporation established by section 703 of this
20 title.

21 “URBAN PARKLAND HERITAGE CORPORATION

22 “SEC. 703. (a) To carry out the provisions of this
23 title, there is established an independent establishment in the
24 executive branch which shall be known as the Urban Park-
25 land Heritage Corporation, and which shall carry out its

5

1 functions subject to the direction and supervision of a Board
2 of Directors (hereinafter referred to as the 'Board'). The
3 Board shall consist of—

4 “ (1) the Secretary of Housing and Urban Devel-
5 opment, who shall serve as Chairman;

6 “ (2) the Secretary of the Interior;

7 “ (3) the Administrator of the Environmental Pro-
8 tection Agency;

9 “ (4) four officials of State government, appointed
10 by the President, by and with the advice and consent of
11 the Senate, two of whom shall be elected officials, and
12 two of whom shall hold positions related to urban de-
13 velopment and the management of open-space lands;

14 “ (5) four officials of local government, appointed
15 by the President, by and with the advice and consent
16 of the Senate, two of whom shall be elected officials, and
17 two of whom shall hold positions related to urban de-
18 velopment and the management of open-spaced lands;
19 and

20 “ (6) four members of the general public, appointed
21 by the President, by and with the advice and consent
22 of the Senate, who have substantial experience in urban
23 development, land use planning, and the management
24 of open-space lands.

25 Not more than two of the members referred to in each of

1 clauses (4), (5), and (6) may be members of the same
2 political party. Not more than one member referred to in
3 clauses (4), (5), and (6) may be a resident of any one
4 State.

5 “(b) It shall be the duty of the Corporation to furnish
6 assistance in accordance with the provisions of this title. All
7 grants and loans made by the Corporation shall be approved
8 by the Board, and for the purpose of any such approval, a
9 quorum of the Board shall consist of two-thirds of the mem-
10 bers who must be actually present and voting. The Board
11 shall meet not less than four times annually.

12 “(c) (1) A member of the Board who is otherwise an
13 officer or employee of the United States shall serve without
14 additional compensation, but shall be reimbursed for travel,
15 subsistence, and other necessary expenses incurred in the
16 performance of duties of the Corporation.

17 “(2) A member of the Board who is not otherwise an
18 officer or employee of the United States shall receive com-
19 pensation for his service as a member the per diem equivalent
20 to the rate for level IV of the Executive Schedule under
21 section 5315 of title 5, United States Code, when engaged
22 in the performance of duties of the Corporation, and shall
23 receive reimbursement for travel, subsistence, and other

1 necessary expenses incurred in the performance of such
2 duties.

3 “(d) The Corporation may employ an Executive Di-
4 rector who shall be paid at an annual rate equal to the an-
5 nual rate of pay for an individual occupying a position under
6 level V of the Executive Schedule under section 5316 of
7 title 5, United States Code.

8 “(e) Section 5108 (c) of title 5, United States Code,
9 is amended by adding at the end thereof the following:

10 ““(11) the Urban Parkland Heritage Corporation
11 may place a total of three positions in GS-16, 17, and
12 18.’

13 “(f) The Corporation may appoint such other em-
14 ployees as may be necessary to carry out its functions.

15 “(g) (1) The functions of the Corporation may not be
16 delegated or transferred to any other agency, and no func-
17 tions other than those conferred by this title may be dele-
18 gated or transferred to the Corporation.

19 “(2) Section 902 (1) of title 5, United States Code,
20 is amended by inserting before the semicolon at the end
21 thereof the following: ‘or the Urban Parkland Heritage
22 Corporation’.

23 “(h) There are hereby authorized to be appropriated

1 such sums as may be necessary for the operation of the
2 Corporation.

3 "GRANTS AND LOANS FOR ACQUISITION, DEVELOPMENT,
4 AND OPERATION OF OPEN-SPACE LAND

5 "SEC. 704. (a) (1) The Corporation is authorized to
6 make grants and loans pursuant to section 709 to States
7 and local public bodies to help finance (A) the acquisition
8 of title to, or other interest in, open-space land in urban
9 areas, and (B) the development of open-space or other
10 land in urban areas for open-space uses.

11 "(2) The amount of any grant under this section shall
12 not exceed 75 per centum of the eligible project cost, as
13 approved by the Corporation, of such acquisition and devel-
14 opment. If, however, the project involves the acquisition of
15 interests in undeveloped or predominantly undeveloped land
16 which, if withheld from commercial, industrial, and residen-
17 tial development, would have special significance in helping
18 to shape economic and desirable patterns of urban growth
19 (including growth outside of existing urban areas which is
20 directly related to the development of new communities or
21 the expansion and revitalization of existing communities), or
22 if the State or local public body could not otherwise reason-
23 ably meet its need for open-space lands, the Corporation may
24 make grants to State and local public bodies in an amount not
25 to exceed 90 per centum of the eligible project cost of the

1 acquisition and development of such lands. The amount of
2 any such loan shall not exceed 50 per centum of such eligible
3 project cost.

4 “(3) Any loan under this section shall bear interest at a
5 rate not less than the average annual interest rate on all
6 interest-bearing obligations of the United States then forming
7 a part of the public debt as computed at the end of the fiscal
8 year next preceding the date of the loan and adjusted to the
9 nearest one-eighth of 1 per centum, and each such loan shall
10 be secured by such real or personal property as the Corpora-
11 tion may require.

12 “(4) In no case shall the combined amount of grants
13 and loans made by the Corporation pursuant to this title
14 to any State or local public body exceed 90 per centum of the
15 eligible project cost for the acquisition and development of
16 open-space lands.

17 “(b) The Corporation is authorized to make grants
18 pursuant to section 709 to States and local public bodies to
19 help finance the operation and maintenance of open-space
20 or other land in urban areas for open-space uses for the
21 first four fiscal years of the operation of such lands. The
22 amount of any such grant shall not exceed 75 per centum
23 of the eligible project cost, as approved by the Corporation,
24 of such operation and maintenance for the first fiscal year
25 of operation, 60 per centum of such costs for the second

10

1 fiscal year of operation, 45 per centum of such costs for
2 the third fiscal year of operation and 30 per centum of
3 such costs for the fourth fiscal year of operation. The
4 eligible project costs for the operation and maintenance of
5 open-space land shall be those costs which are incurred for
6 equipment and supplies used on the site of such open-space
7 land and for the payment of salaries to employees who
8 manage and carry out the programs on the site of such
9 open-space land.

10 “(c) No grant or loan under this title shall be made
11 to acquire and clear developed land in built-up areas unless
12 the local governing body determines that adequate open-
13 space land cannot be effectively provided through the use
14 of existing undeveloped land.

15 “(d) The Corporation may prescribe such further terms
16 and conditions for assistance under this title as it determines
17 to be desirable.

18 “(e) The Corporation shall consult with appropriate
19 agencies and officers of the Federal Government to estab-
20 lish and operate a program to furnish technical assistance,
21 upon request, to States and local public bodies. The Secre-
22 tary of Housing and Urban Development, the Secretary of
23 the Interior, and the Administrator of the Environmental
24 Protection Agency are authorized to furnish to the Corpora-

1 tion such advice and assistance as may be necessary to carry
2 out the provisions of this subsection.

3 “PLANNING AND GRANT REQUIREMENTS

4 “SEC. 705. (a) The Corporation shall make a grant or
5 loan under section 704 only if it finds that such grant or
6 loan is needed for carrying out a unified or officially coordi-
7 nated program, which provides for citizen participation, and
8 which meets criteria established by the Corporation for the
9 provision and development of open-space land which is a
10 part of, or is consistent with, the comprehensively planned
11 development of the urban area.

12 “(b) In carrying out its duties, the Corporation shall
13 also take into account—

14 “(1) the accessibility of major Federal or State
15 outdoor recreational facilities or parklands to the area
16 surrounding the proposed open-space land;

17 “(2) the availability or proposed availability of
18 public transportation to the proposed open-space land;

19 “(3) the extent of urbanization (as determined by
20 the Corporation) in the communities surrounding the
21 proposed open-space land; and

22 “(4) the ability of the States or local public body
23 applying for a grant or loan to acquire open-space land
24 in a timely and efficient manner.

12

1 “CONVERSION TO OTHER USES

2 “SEC. 706. No open-space land for the acquisition of
3 which a grant or loan has been made under section 704 shall
4 be converted to uses not originally approved by the Corpora-
5 tion without satisfactory compliance with regulations estab-
6 lished by the Corporation. Such regulations shall require
7 findings, after public participation (including public hear-
8 ings in a location proximate to the open-space land), that—

9 “(1) there is adequate assurance of the substitu-
10 tion of other open-space land of as nearly as feasible
11 equivalent usefulness, location, and fair market value at
12 the time of the conversion;

13 “(2) the conversion and substitution are needed for
14 orderly growth and development;

15 “(3) the proposed uses of the converted and substi-
16 tuted land are for the benefit of the public and in ac-
17 cordance with the applicable comprehensive plan for
18 the urban area; and

19 “(4) any profits received as a result of such conver-
20 sion are applied to the Urban Parkland Heritage
21 program.

22 “LABOR STANDARDS

23 “SEC. 707. (a) The Corporation shall take such action
24 as may be necessary to insure that all laborers and mechanics

1 employed by contractors or subcontractors in the performance
2 of construction work financed with the assistance of grants
3 under this title shall be paid wages at rates not less than those
4 prevailing on similar construction in the locality as deter-
5 mined by the Secretary of Labor in accordance with the
6 Davis-Bacon Act, as amended. The Corporation shall not
7 approve any such grant without first obtaining adequate as-
8 surance that these labor standards will be maintained upon
9 the construction work.

10 “(b) The Secretary of Labor shall have, with respect to
11 the labor standards specified in subsection (a), the authority
12 and functions set forth in Reorganization Plan Numbered
13 14 of 1950 (15 F.R. 3176; 64 Stat. 1267; 5 U.S.C. 133z-
14 15), and section 2 of the Act of June 13, 1934, as amended
15 (48 Stat. 948; 40 U.S.C. 276c).

16 “MAINTENANCE OF EFFORT

17 “SEC. 708. No grant or loan shall be made to any
18 State or local public body in any fiscal year unless the
19 State or local public body makes assurances to the Cor-
20 poration that the amount available for expenditure by such
21 State or local public body from non-Federal sources for the
22 purposes described in section 704 (a) (1) (A) and (B)
23 in that fiscal year will not be less than the amount expended
24 for such purposes from non-Federal sources during the
25 preceding fiscal year.

1 "CONTRACT AUTHORITY

2 "SEC. 709. To finance grants and loans under this
3 title, the Corporation is authorized to incur obligations on
4 behalf of the United States in amounts aggregating not to
5 exceed \$5,000,000,000. This amount shall become avail-
6 able for obligation on July 1, 1973, and shall remain avail-
7 able until obligated. There are authorized to be appropri-
8 ated for the liquidation of the obligations incurred under
9 this section not to exceed \$1,000,000,000 prior to July 1,
10 1974, not to exceed an aggregate of \$2,000,000,000 prior
11 to July 1, 1975, not to exceed an aggregate of \$3,000,-
12 000,000 prior to July 1, 1976, not to exceed an aggregate
13 of \$4,000,000,000 prior to July 1, 1977, and not to ex-
14 ceed an aggregate of \$5,000,000,000 prior to July 1, 1978.
15 Sums so appropriated shall remain available until
16 expended."

17 (b) The amendment made by subsection (a) shall
18 become effective on July 1, 1973. After June 30, 1973,
19 no new grants or loans shall be made pursuant to title VII
20 of the Housing Act of 1961 as such title was in effect on
21 June 30, 1973, except with respect to projects or programs
22 for which funds have been committed on or before that
23 date.

THE GENERAL COUNSEL OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D. C. 20410

JUN 7 1973

Office of

Honorable John Sparkman
Chairman
Committee on Banking, Housing
and Urban Affairs
United States Senate
Washington, D. C. 20510

JUN 8 1973

Senator John Sparkman

Dear Mr. Chairman:

Subject: S. 12, 93d Congress (Williams)

This is in response to your request for the views of this Department on S. 12, a bill "To amend Title VII of the Housing Act of 1961 to establish an Urban Parkland Heritage Corporation to provide funds for the acquisition and operation of open-space land, and for other purposes."

S. 12 would replace the current "Open Space Land" program. The program contemplated by the bill would be administered by an independent governmental corporation. The corporation would be authorized to incur obligations on behalf of the United States in an amount not exceeding five billion dollars. One billion dollars for each of the first five years would be authorized to be appropriated for the liquidation of the obligations.

This Department does not favor enactment of S. 12.

First, while effecting certain changes in the scope of the present "Open Space Land" program, the bill would continue its categorical grant approach. The Administration, however, has proposed that a number of categorical community development assistance programs be replaced under a "Better Communities Act" by a much more effective and desirable Federal assistance mechanism--special revenue sharing. Under the revenue sharing approach, local officials would enjoy greatly enhanced responsibility and would have freedom to use Federal funds in ways far more responsive to individual community needs for open spaces. Moreover, with

the "Better Communities Act" (S. 1743), funds could be made available to recipients with certainty, without long delays and massive red tape, and without the necessity of the additional costly Federal bureaucracy contemplated by S. 12.

Furthermore, the massive funding level sought in S. 12 is manifestly inconsistent with the efforts this Administration is making to control spending, curb inflation, and avoid increased taxes. The need for acquiring and preserving open space land cannot outweigh the need for fiscal responsibility and for maintaining a sound economy in the interests of all our citizens.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

/s/ James L. Mitchell

James L. Mitchell

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 25 1973

OFFICE OF THE
ADMINISTRATOR

Honorable John Sparkman
Chairman
Committee on Banking, Housing and Urban Affairs
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This report is in response to your request for the comments of the Environmental Protection Agency on S. 12, a bill "To amend title VII of the Housing Act of 1961 to establish an Urban Parkland Heritage Corporation to provide funds for the acquisition and operation of open-space land, and for other purposes."

This bill provides for the creation within the executive branch of an independent Urban Parkland Heritage Corporation with a board of directors including, among others, the Administrator of the Environmental Protection Agency. The purpose of the Corporation would be to extend grants and loans to State and local governmental public bodies to finance the acquisition, development, operation, and maintenance of open-space land in urban areas. Five billion dollars is provided over a five-year period, with a ceiling on outlays of one billion dollars for any one year.

Although we endorse the objective of providing urban dwellers with increased open space for recreational and park facilities, we do not recommend the enactment of S. 12. Our objections to the bill are as follows:

- (1) The Department of Housing and Urban Development currently administers an open-space land program and the bill presents no cogent rationale for altering this. At a time when the Administration is attempting

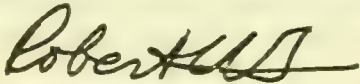
to streamline and upgrade the Administrative capabilities of the Federal government, the creation of another independent Federal entity would seem ill-advised.

- (2) An expanded Federal grant program to States and localities to perform functions that have been historically part of their responsibilities also is inconsistent with the President's program of returning control to those governmental units closest to the governed. Such a massive grant program, aside from being inappropriate at a time when Federal fiscal restraint is needed to combat inflation, could well serve to displace State and local initiative.
- (3) The bill makes no provision for coordinating the open space program with the achievement of other environmental goals in such areas as land use, solid waste management, and air and water pollution abatement.

Accordingly, we recommend that this bill not be enacted.

We have been advised by the Office of Management and Budget that there is no objection to this report from the standpoint of the Administration's program.

Sincerely yours,



Robert W. Fri
Acting Administrator

93^d CONGRESS
1ST SESSION

S. 149

IN THE SENATE OF THE UNITED STATES

JANUARY 4, 1973

Mr. INOUE introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To amend section 5 (c) of the Home Owners Loan Act of 1933 to authorize an increase in the principal amount of mortgages on properties in Alaska, Guam, and Hawaii to compensate for higher prevailing costs.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the first proviso to the first sentence of section 5 (c)
4 of the Home Owners Loan Act of 1933 is amended by insert-
5 ing after "any such lien," the following: "except that with
6 respect to dwellings in Alaska, Guam, and Hawaii the fore-
7 going limitations may, by regulation of the Board, be in-
8 creased by not to exceed 50 per centum of the dollar amount
9 otherwise applicable;"

IN THE SENATE OF THE UNITED STATES

Mr. Mr. MCGOVERN (for himself, Mr. ABOUREZK, Mr. CLARK, Mr. GRAVEL, Mr. HATHAWAY, Mr. KENNEDY, Mr. MOSS, and Mr. RANDOLPH) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To provide housing and community development for persons in rural areas of the United States on an emergency basis.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. This Act may be cited as the “Emergency
4 Rural Housing Act of 1971”.

5 FINDINGS

6 SEC. 2. The Congress finds that—

7 (1) after more than three decades of Federal ac-
8 tivity in the housing field and more than two decades
9 after the enactment of the Housing Act of 1949 which
10 pledged this Nation to a decent home and suitable living

1 environment for every American family, there are mil-
2 lions of substandard, crowded, and otherwise deficient
3 dwelling units which lack running water and sanitation
4 facilities essential to health and decency;

5 (2) more than half of these units are in nonmetro-
6 politan areas;

7 (3) none of the existing housing agencies, public
8 or private, function adequately in meeting the housing
9 needs of the poorest people in small towns and rural
10 areas;

11 (4) the administrative funds and grant and lending
12 authorities of Farmers Home Administration are in-
13 adequate to the task, and its authorized capacity to
14 subsidize dwellings falls far short of that required to
15 provide housing for the poor;

16 (5) public housing exists in little more than token
17 quantities in small towns and rural areas, and public
18 housing legislation presently does not permit a subsidy
19 adequate to meet the needs of the poorest of the poor;

20 (6) despite the moving rhetoric of the last two
21 decades, the authority and funds to satisfy the housing
22 needs of low-income families are not available;

23 (7) existing agencies operating under existing au-
24 thorities could not meet the needs of millions of the rural
25 poor even if all restraints on administrative funds were

1 lifted, nor would they meet those needs if there were
2 no ceiling placed on grant and loan funds; and

3 (8) the ill health and human degradation that flow
4 from this continuing neglect and denial of responsibility
5 call for emergency action.

6 DEFINITIONS

7 SEC. 3. For the purpose of this Act—

8 (1) "Administration" means the Emergency Rural
9 Housing Administration established under section 4 of
10 this Act;

11 (2) "Administrator" means the Administrator of
12 the Administration;

(3) "adjusted income" means the total income of an individual or family reduced by—

15 (A) 5 per centum of that income; (B) 10 per centum of that income;

16 (B) \$300 for that individual or for each mem-
17 ber of that family; and

18 (C) \$1,000 for that individual if he is physi-
19 cally disabled or mentally retarded or for each
20 member of that family who is physically disabled
21 or mentally retarded;

22 (4) "area responsibility agreement" means an
23 agreement between the Administrator and a local agency
24 to provide minimal housing facilities for all eligible per-
25 sons in an area;

4

1 (5) "eligible person" means an individual or family
2 which (A) lives or desires to live in a rural area or
3 small community, and (B) cannot with reasonable certainty
4 obtain minimum housing facilities by any means other
5 than assistance under this Act within two years after the
6 date of application for assistance under this Act;

7 (6) "local agency" means any public or private
8 agency, instrumentality, or organization which meets
9 such criteria as the Administrator shall by regulation re-
10 quire, and includes any such agency which exists under
11 any Federal, State, or local law for purposes not in-
12 consistent with this Act, and any such agency estab-
13 lished hereafter for any such purpose;

14 (7) the term "minimal housing facilities" means
15 a safe, weatherproof dwelling with running potable wa-
16 ter, modern sanitation facilities including a kitchen sink,
17 toilet, and shower or tub, but such term does not include
18 any dwelling which does not meet the requirements es-
19 tablished by the Administrator with respect to square
20 footage and other facilities or standards;

21 (8) "rural area" means any open country or any
22 place in the United States which is not contained in a
23 standard metropolitan statistical area; and

24 (9) "small community" means any political sub-

1 division in the United States which has a population of
2 less than twenty-five thousand people.

3 ESTABLISHMENT AND DUTIES

4 SEC. 4. (a) There is established an Emergency Rural
5 Housing Administration. The management of the Admin-
6 istration shall be vested in an Administrator who shall be
7 appointed by the President by and with the advice and con-
8 sent of the Senate.

9 (b) It shall be the duty of the Administration to pro-
10 vide minimal housing facilities for all eligible persons in rural
11 areas and small communities and to do so to the extent pos-
12 sible within a five-year period. The duties and powers of
13 the Administration shall not be transferred to any other de-
14 partment, agency, or instrumentality of the United States.

15 (c) Section 5314 of title 5, United States Code, is
16 amended by adding at the end thereof the following new
17 clause:

18 “(58) Administrator, Emergency Rural Housing
19 Administration.”

20 POWERS

21 SEC. 5. The Administrator shall have the power—

22 (1) to sue and be sued, and complain and defend,
23 in its name and through its own counsel;

6

1 (2) to adopt, amend, and repeal such rules and
2 regulations as may be necessary;

3 (3) to lease, purchase, or acquire by condemna-
4 tion or otherwise, and own, hold, improve, use, or other-
5 wise deal in and with, any property, real, personal, or
6 mixed, or any interest therein, wherever situated;

7 (4) to accept gifts or donations of services, or
8 property, real, personal, mixed, tangible or intangible,
9 in aid of any of the purposes of the Administration;

10 (5) to sell, convey, mortgage, pledge, lease, ex-
11 change, and otherwise dispose of its property and
12 assets;

13 (6) to appoint such officers and employees as may
14 be required without regard to the provisions of title
15 5, United States Code, governing appointments in the
16 competitive service; and

17 (7) to enter into contracts, execute instruments,
18 incur liabilities, and do all things which are necessary
19 or incidental to the proper management of its affairs.

20 HOME OWNERSHIP

21 SEC. 6. (a) The Administrator is authorized to make
22 loans to eligible persons to finance the acquisition of land
23 and the construction thereon of minimal housing facilities,
24 or to finance the acquisition or rehabilitation of existing

1 facilities in accordance with minimum housing facilities
2 standards.

3 (b) At least 50 per centum of the principal amount
4 of any loan made under this subsection shall be amortized
5 over a period of not more than forty years, shall bear inter-
6 est at a rate of not less than 1 per centum per year, and
7 shall be secured by a first mortgage. The remainder of such
8 principal amount may be a note secured by a second mort-
9 gage which becomes payable and interest bearing only when
10 and to the extent the borrower's ability to repay exceeds
11 that required to retire the first note at the maximum inter-
12 est rate or upon the sale or other disposition of the property
13 financed by the loan. The Administrator shall determine the
14 percentage rate, the amount of the principal deferment, and
15 the other terms and conditions of any such loan, taking into
16 account the adjusted income of the eligible person involved.
17 All amounts received by the Administrator as principal or
18 interest payments on such loans shall be paid into the
19 Treasury in accordance with section 13 of this Act.

20 (c) The Administrator may not require an eligible bor-
21 rower to pay more than 20 per centum of adjusted annual
22 income on principal, interest, taxes, and insurance (PITI)
23 but a borrower, in order to qualify for ownership may vol-
24 untarily agree to pay more,

1 HOUSING DEVELOPMENTS

2 SEC. 7. The Administrator is authorized to acquire land
3 and engage in the development of housing projects to be
4 sold under section 6 or rented under section 8 of this Act.

5 RENTAL FACILITIES

6 SEC. 8. (a) The Administrator is authorized to finance
7 all or part of the acquisition, construction, rehabilitation,
8 operation, and maintenance of (1) minimal housing facili-
9 ties in rural areas and small communities to be rented by
10 eligible persons, (2) water and sewer facilities for such
11 housing facilities, and (3) related community facilities for
12 such housing facilities.

13 (b) Rental payments and the amount of assistance shall
14 bear a reasonable relationship to the income of the eligible
15 person, taking into account reasonable needs for food, cloth-
16 ing, medical care, education, and other necessities as deter-
17 mined by the Administrator. In no case shall any such pay-
18 ment including the reasonable cost of heat, water, and light,
19 exceed 25 per centum of the adjusted income of the eligible
20 person.

21 (c) Any lease or other occupancy agreement for facili-
22 ties under this section shall include whenever feasible an
23 option to buy in accordance with the provisions of section 6
24 of this Act.

1 LOCAL AGENCY AGREEMENTS

2 SEC. 9. (a) The Administrator may enter into area re-
3 sponsibility agreements with any local agency. The Admin-
4 istrator shall furnish such financial, technical, and other
5 assistance as any such local agency may require in order
6 to carry out programs authorized by this Act in accordance
7 with the terms of any such agreement. The Administrator
8 shall have access to the books, records, and any other papers
9 of any local agency which enters into an area responsibility
10 agreement in order to insure that such agency is at all times
11 operating in compliance with the provisions of this Act.

12 (b) Notwithstanding any other provision of law, any
13 agreement under this section may provide that the Adminis-
14 trator may furnish supplemental assistance for programs au-
15 thorized or administered under any other provision of Fed-
16 eral or State law, if the Administrator is satisfied upon the
17 basis of such assurances as he may require, that such agree-
18 ment will carry out the purposes of this Act.

19 LIMITATIONS AND CONDITIONS

20 SEC. 10. (a) The Administrator shall not require, as a
21 condition of assistance under this Act, the relocation of any
22 eligible person in order to engage in or to facilitate the
23 economic development of any area.

1 (b) Any construction or rehabilitation undertaken with
2 funds authorized under this Act shall—

3 (1) be designed to require minimum maintenance
4 over a useful life of not less than fifty years: *Provided*,
5 That this limitation shall not apply to new or rehabili-
6 tated housing if the Administrator finds that less per-
7 manent housing is in accordance with the basic purposes
8 of this Act;

9 (2) be in accordance with plans developed with the
10 active participation of the eligible persons involved.

11 **PRIORITIES**

12 SEC. 11. (a) The Administrator shall insofar as is prac-
13 ticable furnish assistance under this Act to eligible persons
14 with the lowest adjusted incomes first.

15 (b) To the maximum extent feasible, the Administra-
16 tion shall provide for homeownership rather than rental
17 occupancy.

18 **ANNUAL REPORT**

19 SEC. 12. The Administration shall, as soon as practicable
20 after the end of each fiscal year, prepare and transmit to the
21 Congress and the President an annual report of the opera-
22 tion and activities.

23 **BORROWING AUTHORITY**

24 SEC. 13. (a) The Administrator is authorized to issue
25 to the Secretary of the Treasury notes or other obligations

1 in such sums as may be necessary to carry out the purposes of
2 this Act, in such forms and denominations, bearing such ma-
3 turities, and subject to such terms and conditions as may
4 be prescribed by the Secretary of the Treasury. Such notes
5 or other obligations shall bear interest at a rate determined
6 by the Secretary of the Treasury, taking into consideration
7 the current average market yield on outstanding marketable
8 obligations of the United States of comparable maturities
9 during the month preceding the issuance of the notes or other
10 obligations. The Secretary of the Treasury is authorized and
11 directed to purchase any notes and other obligations issued
12 hereunder and for that purpose he is authorized to use as a
13 public debt transaction the proceeds from the sale of any
14 securities issued under the Second Liberty Bond Act, and the
15 purposes for which securities may be issued under that Act
16 are extended to include any purchase of such notes and ob-
17 ligations. The Secretary of the Treasury may at any time
18 sell any of the notes or other obligations acquired by him
19 under this subsection. All redemptions, purchases, and sales
20 by the Secretary of the Treasury of such notes or other
21 obligations shall be treated as public debt transactions of the
22 United States.

23 (b) There is authorized to be appropriated \$500,000,-
24 000 per year, reduced by any amounts paid into the Treasury
25 each such year on the loans made by the Administrator under

- 1 this Act, to be applied to the retirement of notes or other
- 2 obligations issued by the Administrator under subsection (a)
- 3 of this section.

93D CONGRESS
1ST SESSION

S. 513

IN THE SENATE OF THE UNITED STATES

JANUARY 23, 1973

Mr. Moss introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To amend section 232 of the National Housing Act to authorize insured loans to provide fire safety equipment for nursing homes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 232 of the National Housing Act is amended
4 by adding at the end thereof a new subsection as follows:
5 “(i) (1) The Secretary is authorized upon such terms
6 and conditions as he may prescribe to make commitments to
7 insure and to insure loans made by financial institutions to
8 nursing homes and intermediate care facilities to provide fire
9 safety equipment. As used in this subsection, ‘fire safety
10 equipment’ means any device or facility designed to reduce

1 the risk of personal injury or property damage resulting from
2 fire.

3 “(2) To be eligible for insurance under this subsection,
4 a loan shall—

5 “(A) not exceed the Secretary’s estimate of the
6 reasonable cost of the equipment fully installed;

7 “(B) bear interest at not to exceed a rate pre-
8 scribed by the Secretary;

9 “(C) have a maturity satisfactory to the Secretary,
10 but not to exceed ——— years from the beginning of
11 amortization of the loan or three-quarters of the remain-
12 ing economic life of the structure in which the equip-
13 ment is to be installed, whichever is the lesser; and

14 “(D) comply with such other terms, conditions,
15 and restrictions as the Secretary may prescribe.

16 “(3) The provisions of paragraphs (5), (6), (7), (9),
17 and (10) of section 220 (h) shall be applicable to loans
18 insured under this subsection, except that all references to
19 ‘home improvement loans’ shall be construed to refer to
20 loans under this subsection.

21 “(4) The provisions of subsections (c), (d), and (h)
22 of section 2 shall apply to loans insured under this sub-
23 section, and for the purposes of this subsection references
24 in such subsections to ‘this section’ or ‘this title’ shall be
25 construed to refer to this subsection.”

93d CONGRESS
1st Session

S. 779

IN THE SENATE OF THE UNITED STATES

FEBRUARY 6, 1973

Mr. SPARKMAN introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To provide that certain expenses incurred in the construction of a municipal building in Talladega, Alabama, shall be eligible as local grants-in-aid for purposes of title I of the Housing Act of 1949.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That, notwithstanding the date of the commencement of con-
4 struction of the J. L. Hardwick Municipal Building in the
5 city of Talladega, Alabama, local expenditures made in con-
6 nection with the construction of such building shall, to the
7 extent otherwise eligible, be counted as local grants-in-aid
8 toward the neighborhood development program in such city
9 (Urban Renewal Project Ala. A-15) in accordance with
10 the provisions of title I of the Housing Act of 1949.

93^d CONGRESS
1ST SESSION

S. 833

IN THE SENATE OF THE UNITED STATES

FEBRUARY 8, 1973

Mr. TOWER (for himself and Mr. FANNIN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To repeal certain provisions of law applicable to federally assisted housing.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 212 of the National Housing Act is repealed.
4 SEC. 2. Paragraphs (2) and (3) of section 16 of the
5 United States Housing Act of 1937 are repealed.

II

★(Star Print)

93^D CONGRESS
1ST SESSION

S. 854

IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 1973

MR. STEVENSON introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To improve planning and management processes in States, regions, and localities.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. (a) Section 701 (a) of the Housing Act of
4 1954 is amended as follows:

5 (1) By striking out the part which precedes para-
6 graph (1) and inserting in lieu thereof the following:

7 “SEC. 701. (a) In order to assist general purpose units
8 of government and regional combinations thereof at the State
9 and local level in solving planning problems and developing
10 the management capacity to implement plans to solve these
11 problems, including planning and related management prob-

II—O

★(Star Print)

1 lems resulting from an increasing concentration of population
2 in metropolitan and other urban areas and the outmigration
3 from and lack of coordinated development of resources and
4 services in rural areas; to facilitate the comprehensive plan-
5 ning process for urban and rural developments; to encourage
6 the development by such governments of a more rational
7 process for setting policy objectives, designing, and over-
8 seeing programs for meeting these objectives, and evaluating
9 the progress of such programs toward these objectives; and
10 to help such governments to establish and improve the pro-
11 fessional capabilities of staffs charged with carrying out
12 activities permitted under this section and to engage private
13 consultants where their professional services are deemed
14 appropriate by the assisted governments, the Secretary, upon
15 application and in accordance with the requirements of this
16 section, is authorized to make grants to—”.

17 (2) By striking out “State planning agencies” in
18 paragraph (1) and inserting in lieu thereof “States”.

19 (3) By striking out the numbered paragraphs fol-
20 lowing paragraph (1) and inserting in lieu thereof the
21 following:

22 “(2) States for State and interstate activities which
23 may be assisted under this section;

24 “(3) Cities (including the District of Columbia)
25 having populations of fifty thousand or more according

1 to the latest decennial census for local activities which
2 may be assisted under this section;

3 “(4) The areawide organization in any metropoli-
4 tan area, or in any region or district, which is formally
5 charged with carrying out the provisions of section 204
6 of the Demonstration Cities and Metropolitan Develop-
7 ment Act of 1966 and section 401 of the Intergovern-
8 mental Cooperation Act of 1968, and in the case of any
9 area or district of a State which is not a metropolitan
10 area and does not have an organization which is charged
11 with carrying out the provisions of section 401 of the
12 Intergovernmental Cooperation Act of 1968, that agency
13 authorized by the Governor of the State to carry out
14 comprehensive planning for the area, region, or district:
15 *Provided*, That any such areawide organization, and any
16 such agency to the extent practicable, shall (A) be com-
17 posed of or responsible to the elected officials of the unit
18 or units of general local government for the jurisdictions
19 of which they are empowered to carry out the provisions
20 of the Acts referred to above, or (B) be composed of
21 persons elected by the citizens of such jurisdictions;

22 “(5) Indian tribal groups or bodies; and

23 “(6) Other governmental units or agencies having
24 special planning needs related to the purposes of this
25 section, including but not limited to interstate regional

4

1 planning commissions, and units or agencies for disaster
2 areas, federally impacted areas, and local development
3 districts, to the extent these needs cannot otherwise be
4 adequately met.”

5 (4) By striking out the part which follows the
6 numbered paragraphs and inserting in lieu thereof the
7 following:

8 “Activities assisted under this section shall, to the maximum
9 extent feasible, cover entire areas having common or related
10 development problems. The Secretary shall encourage co-
11 operation in preparing and carrying out plans among all
12 interested municipalities, political subdivisions, public agen-
13 cies, and other parties in order to achieve coordinated de-
14 velopment of entire areas. To the maximum extent feasible,
15 pertinent plans and studies already made for areas shall be
16 utilized so as to avoid unnecessary repetition of effort and
17 expense. Activities assisted under this section shall be sub-
18 ject to the provisions of section 204 of the Demonstration
19 Cities and Metropolitan Development Act of 1966 and sec-
20 tion 401 of the Intergovernmental Cooperation Act of
21 1968.”

22 (b) Section 701 of such Act is further amended by
23 striking out all that follows subsection (a) and inserting in
24 lieu thereof the following:

25 “(b) Activities which may be assisted under this section

5

1 include those necessary (1) to develop and carry out a com-
2 prehensive plan as part of an ongoing planning process, (2)
3 to develop and improve the management capability directly
4 necessary to implement such plan or part thereof, and (3)
5 to develop a policy-planning-evaluation capacity so that the
6 recipient may more rationally (A) determine its needs, (B)
7 set long-term goals and short-term objectives, (C) devise
8 programs and activities to meet these goals and objectives,
9 and (D) evaluate the progress of such programs in accom-
10 plishing those goals and objectives. Activities assisted under
11 this section shall be carried out by professionally competent
12 persons. Procedures, guidelines, and regulations to implement
13 this section shall be consistent with provisions of the Inter-
14 governmental Cooperation Act of 1968.

15 “(c) Each recipient of assistance under this section shall
16 carry out an ongoing comprehensive planning process which
17 shall make provision for public hearings and the active par-
18 ticipation of citizen groups. The process shall involve the
19 development and subsequent modifications of a comprehen-
20 sive plan which shall be reviewed at least biennially for
21 necessary or desirable amendments. The review of any such
22 plan shall include public hearings. Any such plan shall
23 include, as a minimum, each of the following elements:

24 “(1) A housing element which shall take into
25 account all available evidence of the assumptions and

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1 statistical bases upon which the projection of zoning,
2 community facilities, and population growth is based, so
3 that the housing needs of both the region and the local
4 communities studied in the planning will be adequately
5 covered in terms of existing and prospective population
6 growth. The development and formulation of State and
7 local goals pursuant to title XVI of the Housing and
8 Urban Development Act of 1968 shall be a part of such
9 a housing element.

10 “ (2) A five-year-capital-programing element, in-
11 cluding the scheduling of public facilities and capital im-
12 provements consistent with other elements of the plan,
13 and based on a determination of relative urgency.

14 “ (3) A land-use element which shall include (A)
15 studies, criteria, standards, and implementing procedures
16 necessary for effectively guiding and controlling major
17 decisions as to where growth shall take place within the
18 recipient's boundaries, and (B) as a guide for govern-
19 mental policies and activities, general plans with respect
20 to the pattern and intensity of land use for residential,
21 commercial, industrial, and other activities.

22 Each of the elements set forth above shall specify (i) broad
23 goals and annual objectives (in measurable terms wherever
24 possible), (ii) programs designed to accomplish these objec-
25 tives, and (iii) procedures, including criteria set forth in

7

1 advance, for evaluating programs and activities to determine
2 whether they are meeting objectives. Such elements shall
3 be consistent with each other and consistent with stated
4 national growth policy.

5 “(d) After an initial application for assistance under
6 this section has been approved, the Secretary may make
7 grants on an annual basis, if—

8 “(1) the applicant submits to the Secretary an-
9 nually a description of its work program designed to
10 meet objectives for the next succeeding one-year period
11 and setting forth any changes the applicant intends to
12 undertake to achieve better progress; and

13 “(2) the applicant submits to the Secretary bien-
14 nially (A) an evaluation of the progress made by it
15 during the previous two years in meeting objectives
16 set forth in its plan, and (B) a description of any
17 changes in the plan’s goals or objectives.

18 The Secretary shall make no grant—

19 “(i) to any applicant which has not made a good
20 faith effort to implement its goals and objectives as set
21 forth in its comprehensive plan; and

22 “(ii) after three years from the date of enactment
23 of this provision, to any applicant (other than an ap-
24 plicant which is a county described in the proviso to
25 paragraph (1) of subsection (a), or an applicant de-

1 scribed in paragraph (5) or (6) of subsection (a)),
2 unless the Secretary is satisfied that the comprehensive
3 planning being carried out by the applicant includes the
4 elements specified in paragraphs (1)–(3) of subsection
5 (c).

6 “(e) A grant made under this section shall not exceed
7 80 per centum of the estimated cost of the work for which
8 the grant is made. There are authorized to be appropriated
9 for the purposes of this section not to exceed \$265,000,000
10 prior to July 1, 1969, not to exceed \$470,000,000 prior to
11 July 1, 1972, not to exceed \$607,000,000 prior to July 1,
12 1973, and not to exceed \$807,000,000 prior to July 1, 1974.
13 Of the sums appropriated for any fiscal year commencing
14 after June 30, 1973, there shall be available solely for grants
15 to applicants described in paragraph (4) of subsection (a)
16 an amount equal to (1) 30 per centum of any sums so ap-
17 propriated which do not exceed \$125,000,000 in the aggre-
18 gate, and (2) 25 per centum of any sums so appropriated
19 which are in excess of such \$125,000,000. Any amounts
20 appropriated under this section shall remain available until
21 expended and amounts authorized but not appropriated for
22 any fiscal year shall be available for appropriation for any
23 subsequent fiscal year ending on or before June 30, 1974.

24 “(f) It is the further intent of this section to encourage
25 comprehensive planning on a unified basis for States, cities,

1 counties, metropolitan areas, districts, regions, and Indian
2 reservations and the establishment and development of the
3 organizational units needed therefor. In extending financial
4 assistance under this section, the Secretary may require such
5 assurances as he deems adequate that the appropriate State
6 and local agencies are making reasonable progress in the
7 development of the elements of comprehensive planning. The
8 Secretary is authorized by contract, grant, or otherwise to
9 provide technical assistance to State and local governments,
10 and interstate and regional combinations thereof, to Indian
11 tribal bodies, and to governmental units or agencies described
12 in subsection (a) (6), undertaking such planning and, by
13 contract or otherwise, to make studies and publish informa-
14 tion on comprehensive planning and related management
15 problems.

16 “(g) The consent of the Congress is hereby given to
17 any two or more States to enter into agreements or compacts,
18 not in conflict with any law of the United States, for coopera-
19 tive effort and mutual assistance in the comprehensive plan-
20 ning for the growth and development of interstate, metro-
21 politan, or other urban areas, and to establish such agencies,
22 joint or otherwise, as they may deem desirable for making
23 effective such agreements and compacts.

24 “(h) In addition to the planning grants authorized by
25 subsection (a), the Secretary is further authorized to make

1 grants to organizations composed of public officials repre-
2 sentative of the political jurisdictions within the metropolitan
3 area, region, or district for the purpose of assisting such orga-
4 nizations to undertake studies, collect data, develop metro-
5 politan, regional, and district plans and programs, and engage
6 in such other activities, including implementation of such
7 plans, as the Secretary finds necessary or desirable for the
8 solution of the metropolitan, regional, or district problems in
9 such areas, regions, or districts. To the maximum extent feasi-
10 ble, all grants under this subsection shall be for activities
11 relating to all the developmental aspects of the total metro-
12 politan area, region, or district including, but not limited to,
13 land use, transportation, housing economic development,
14 natural resources development, community facilities, and the
15 general improvement of living environments.

16 “(i) In addition to the other grants authorized by this
17 section, the Secretary is authorized to make grants to assist
18 any city, other municipality, or county in making a survey
19 of, or in acquiring, the structures and sites in such locality
20 which are determined by its appropriate authorities to be of
21 historic or architectural value. Any such survey shall be de-
22 signed to identify the historic structures and sites in the lo-
23 cality, determine the cost of their rehabilitation or restoration,
24 and provide such other information as may be necessary or
25 appropriate to serve as a foundation for a balanced and effec-

1 tive program of historic preservation in such locality. The
2 aspects of any such survey which relate to the identification
3 of historic and architectural values shall be conducted in ac-
4 cordance with criteria found by the Secretary to be com-
5 parable to those used in establishing the national register
6 maintained by the Secretary of the Interior under other pro-
7 visions of law; and the results of each such survey shall be
8 made available to the Secretary of the Interior. A grant
9 under this subsection shall be made to the appropriate agency
10 or entity specified in paragraphs (1) through (6) of subsec-
11 tion (a) or, if there is no such agency or entity which is
12 qualified and willing to receive the grant and provide for its
13 utilization in accordance with this subsection, directly to the
14 city, other municipality, or county involved.

15 “(j) Grants made under this section may be used, sub-
16 ject to regulations and conditions prescribed by the Sec-
17 retary, for any activities made eligible by the provisions of
18 this section; but such regulations shall provide that grant
19 assistance shall not be used to defray the cost of the acqui-
20 sition (other than historic structures and sites as provided in
21 subsection (i)), construction, repair, or rehabilitation of,
22 or the preparation of engineering drawings or similar de-
23 tailed specifications for, specific housing, capital facilities, or
24 public works projects.

25 “(k) The Secretary shall consult with the heads of

1 other Federal departments and agencies having responsi-
2 bilities related to the purposes of this section, including re-
3 sponsibilities connected with the economic development of
4 rural and depressed areas, and the protection and enhance-
5 ment of the Nation's natural environment, with respect to
6 (1) general standards, policies, and procedures to be fol-
7 lowed in the administration of this section, and (2) particu-
8 lar grant actions or approvals which the Secretary believes
9 to be of special interest or concern to one or more of such
10 departments and agencies.

11 “(1) Funds made available under any Federal assist-
12 ance program for projects or activities, approved as part of
13 or in furtherance of a planning program or related manage-
14 ment activities assisted under this section, may be used
15 jointly with funds made available for such projects or ac-
16 tivities under any other Federal assistance program, subject
17 to regulations prescribed by the President. Such regulations
18 may include provisions for common technical or administra-
19 tive requirements where varying or conflicting provisions
20 of law or regulations would otherwise apply, for establishing
21 joint management funds and common non-Federal shares,
22 and for special agreements or delegations of authority, among
23 different Federal agencies in connection with the supervision
24 or administration of assistance. Such regulations shall in any
25 case include appropriate criteria and procedures to assure

1 that any special authorities conferred, which are not other-
2 wise provided for by law, shall be employed only as neces-
3 sary to promote effective and efficient administration and
4 in a manner consistent with the protection of the Federal
5 interest and program purposes or statutory requirements of
6 a substantive nature. For purposes of this subsection, the
7 term 'Federal assistance program' has the same meaning as
8 in the Intergovernmental Cooperation Act of 1968.

9 " (m) The Secretary may, as necessary or appropriate
10 and with the approval of the President, delegate any of his
11 powers under this section to the heads of other Federal
12 agencies and authorize the redelegation thereof, subject to
13 such conditions or provisions as may be appropriate to assure
14 effective coordination between the powers so delegated and
15 other powers or functions retained by the Secretary.

16 " (n) As used in this section—

17 (1) The term 'metropolitan area' means a stand-
18 ard metropolitan statistical area, as established by the
19 Office of Management and Budget, subject, however, to
20 such modifications or extensions as the Secretary deems
21 to be appropriate for the purposes of this section.

22 " (2) The term 'region' includes (A) all or part of
23 the area of jurisdiction of one or more units of general
24 local government, and (B) one or more metropolitan
25 areas.

1 “(3) The term ‘district’ includes all or part of the
2 area of jurisdiction of (A) one or more counties, and
3 (B) one or more other units of general local govern-
4 ment, but does not include any portion of a metropolitan
5 area.

6 “(4) The term ‘comprehensive planning’ includes
7 the following:

8 “(A) preparation, as a guide for governmental
9 policies and action, of general plans with respect to
10 (i) the pattern and intensity of land use, (ii) the
11 provision of public facilities (including transporta-
12 tion facilities) and other government services, and
13 (iii) the effective development and utilization of
14 human and natural resources;

15 “(B) identification and evaluation of area
16 needs (including housing, employment, education,
17 and health) and formulation of specific programs
18 for meeting the needs so identified;

19 “(C) surveys of structures and sites which are
20 determined by the appropriate authorities to be of
21 historic or architectural value;

22 “(D) long-range physical and fiscal plans for
23 such action;

24 “(E) programing of capital improvements and
25 other major expenditures, based on a determination

1 of relative urgency, together with definite financing
2 plans for such expenditures in the earlier years of
3 the program;

4 “(F) coordination of all related plans and activ-
5 ities of the State and local governments and agen-
6 cies concerned; and

7 “(G) preparation of regulatory and administra-
8 tive measures in support of the foregoing.

9 Comprehensive planning for the purpose of districts shall
10 not include planning for or assistance to establishments
11 in relocating from one area to another or subcontractors
12 whose purpose is to divest, or whose economic success
13 is dependent upon divesting, other contractors or sub-
14 contractors of contracts theretofore customarily per-
15 formed by them. The limitation set forth in the preceding
16 sentence shall not be construed to prohibit assistance for
17 the expansion of an existing business entity through the
18 establishment of a new branch, affiliate, or subsidiary of
19 such entity, if the Secretary finds that the establishment
20 of such branch, affiliate, or subsidiary will not result in
21 an increase in unemployment in the area of original loca-
22 tion or in any other area where such entity conducts busi-
23 ness operations, unless the Secretary has reason to believe
24 that such branch, affiliate, or subsidiary is being estab-
25 lished with the intention of closing down the operations

1 of the existing business entity in the area of its original
2 location or in any other area where it conducts such
3 operations.

4 “(o) In carrying out the provisions of this section
5 relating to planning for States, regions, or other multijuris-
6 dictional areas whose development has significance for pur-
7 poses of national growth and urban development objectives,
8 the Secretary shall encourage the formulation of plans and
9 programs which will include the studies, criteria, standards,
10 and implementing procedures necessary for effectively guid-
11 ing and controlling major decisions as to where growth
12 should take place within such States, regions, or areas. Such
13 plans and programs shall take account of the availability of
14 and need for conserving land and other irreplaceable natural
15 resources; of projected changes in size, movement, and com-
16 position of population; of the necessity for expanding housing
17 and employment opportunities; of the opportunities, require-
18 ments, and possible locations for, new communities and
19 large-scale projects for expanding or revitalizing existing
20 communities; and of the need for methods of achieving mod-
21 ernization, simplification, and improvements in govern-
22 mental structures, systems, and procedures related to growth
23 objectives. If the Secretary determines that activities other-
24 wise eligible for assistance under this section are necessary to
25 the development or implementation of such plans and pro-

grams, he may make grants in support of such activities to any governmental agency or organization of public officials which he determines is capable of carrying out the planning work involved in an effective and efficient manner and may make such grants in an amount equal to not more than 80 per centum of the cost of such activities.”

COORDINATION OF FEDERAL AIDS IN METROPOLITAN AREAS

SEC. 2. (a) Section 204 (a) of the Demonstration Cities and Metropolitan Development Act of 1966 is amended to read as follows:

“SEC. 204. (a) All applications for Federal loans or grants to assist in carrying out open-space land projects or comprehensive planning activities or for the planning and construction of hospitals, airports, libraries, water supply and distribution facilities, sewerage facilities and waste treatment works, highways, transportation facilities, law enforcement facilities, water development and land conservation projects, and other community development activities within any metropolitan area shall be submitted for review—

“(1) to an areawide agency which has prepared or is in the process of preparing a metropolitan or regional plan for the area within which the assistance is to be used and which is (i) predominantly composed of or responsible to the elected officials of a unit of areawide government or of the units of general local government

1 within the jurisdiction of which such agency is author-
2 ized to engage in such planning, or (ii) directly respon-
3 sible to citizens of that area; except that if State laws
4 do not provide for the establishment of agencies of the
5 type described in clause (i) or (ii), the review herein
6 required may be made by an areawide agency or other
7 entity established under applicable State law which is,
8 to the greatest extent practicable, composed of or re-
9 sponsible to the elected officials referred to in clause (i) ;
10 and

11 “(2) if made by a special purpose unit of local gov-
12 ernment, to the unit or units of general local govern-
13 ment with authority to operate in the area within which
14 the project is to be located.”

15 (b) Section 204 of such Act is further amended by add-
16 ing at the end thereof a new subsection as follows:

17 “(d) Federal agencies administering programs referred
18 to in subsection (a), or specified in rules and regulations
19 issued under subsection (c) of this section or section 401 of
20 the Intergovernmental Cooperation Act of 1968, shall make
21 a report to the Congress, not later than July 1, 1973, con-
22 cerning their administration of this section and title IV of
23 the Intergovernmental Cooperation Act. The report of any
24 such agency shall include the agency’s procedures for ad-

19

1 ministering its responsibilities under rules and regulations so
2 issued, and for each type of applicant—

3 “(1) the number of applications received by the
4 agency which are subject to such rules and regulations;

5 “(2) the number (A) of such applications accom-
6 panied by comments from State, areawide, or regional
7 agencies, (B) of such applications accompanied by
8 certification under subsection (b) (2), and (C) of such
9 applications which are not accompanied by either com-
10 ments or such certifications; and

11 “(3) the number of applicants referred to in each
12 of the clauses (A), (B), and (C) of paragraph (2)
13 with respect to which (i) generally favorable comments,
14 and (ii) generally adverse comments, were received
15 from such agencies, and the number of such applications
16 which were (A) approved, (B) disapproved, (C) re-
17 turned to the applicant for further information or re-
18 vision, and (D) not acted upon.

19 The report of any such agency shall also indicate the approxi-
20 mate length of time after the approval or disapproval of an
21 application before the agency gives the required notice to
22 the State, areawide, or regional agency making comments
23 with respect to such application. Such report shall contain
24 an evaluation by the reporting agency with respect to the

1 effect of this section, and of rules and regulations prescribed
2 pursuant to subsection (c), on its operations, together with
3 recommendations for improvement.”

4 TRAINING AND FELLOWSHIP PROGRAMS

5 SEC. 3. (a) Section 801 (b) of the Housing and Urban
6 Development Act of 1964 is amended to read as follows:

7 “(b) It is the purpose of this title to provide fellow-
8 ships for the graduate training of professional city and re-
9 gional planning, and management, and housing specialists,
10 and professionally trained personnel with a general capacity
11 in urban affairs and problems; to make grants to and con-
12 tracts with institutions of higher education (or combinations
13 of such institutions) to assist them in planning, developing,
14 strengthening, improving, or carrying out programs or proj-
15 ects for the preparation of graduate or professional students
16 to enter the public service; and to assist and encourage the
17 States and localities, in cooperation with public and private
18 universities and colleges and urban centers and with busi-
19 ness firms and associations, labor unions, and other inter-
20 ested associations and organizations, to (1) organize,
21 initiate, develop, and expand programs which will provide
22 special training in skills needed for economic and efficient
23 community development to those technical, professional, and
24 other persons with the capacity to master and employ such

1 skills who are, or are training to be, employed by a govern-
2 mental or public body which has responsibility for commu-
3 nity development, or by a private nonprofit organization
4 which is conducting or has responsibility for housing and
5 community development programs, and (2) support State
6 and local research that is needed in connection with housing
7 programs and needs, public improvement programing, code
8 problems, efficient land use, urban transportation, and simi-
9 lar community development problems.”

10 (b) Section 802 (a) of such Act is amended to read
11 as follows:

12 “SEC. 802. (a) The Secretary is authorized to provide
13 fellowships for the graduate training of professional city
14 planning, management, and housing specialists, and other
15 persons who wish to develop a general capacity in urban
16 affairs and problems as herein provided. Persons shall be
17 selected for such fellowships solely on the basis of ability and
18 upon the recommendation of the Urban Studies Fellowship
19 Advisory Board established pursuant to subsection (b). Fel-
20 lowships shall be solely for training in public and private non-
21 profit institutions of higher education having programs of
22 graduate study in the field of city planning or in related fields
23 (including architecture, civil engineering, economics, municipi-
24 pal finance, public administration, urban affairs, and sociol-

1 ogy) which programs are oriented to training for careers in
2 city and regional planning, housing, urban renewal, and com-
3 munity development.”

4 (c) Title VIII of such Act is further amended (1) by
5 redesignating sections 804–807 as sections 805–808, respec-
6 tively, and (2) by adding after section 803 a new section as
7 follows:

8 “PROJECT GRANTS AND CONTRACTS

9 “SEC. 804. (a) The Secretary is authorized to make
10 grants to or contracts with institutions of higher education, or
11 combinations of such institutions, to assist them in planning,
12 developing, strengthening, improving, or carrying out pro-
13 grams or projects (i) for the preparation of graduate or pro-
14 fessional students in the fields of city and regional planning
15 and management, housing, and urban affairs, or (ii) for re-
16 search into, or development or demonstration of, improved
17 methods of education for these professions. Such grants or
18 contracts may include payment of all or part of the cost of
19 programs or projects.

20 “(b) (1) A grant or contract authorized by this section
21 shall be made only upon application to the Secretary at such
22 time or times and containing such information as he may
23 prescribe, except that no such application shall be approved
24 unless it—

25 “(A) sets forth programs, activities, research, or

1 development for which a grant is authorized under this
2 section;

3 “(B) provides for such fiscal control and fund
4 accounting procedures as may be necessary to assure
5 proper disbursement of and accounting for Federal funds
6 paid to the applicant under this subsection; and

7 “(C) provides for making such reports, in such form
8 and containing such information, as the Secretary may
9 require to carry out his functions under this subsection,
10 and for keeping such records and for affording such access
11 thereto as the Secretary may find necessary to assure the
12 correctness and verification of such reports.

13 “(2) Payments under this section may be used, in ac-
14 cordance with regulations of the Secretary, and subject to
15 the terms and conditions set forth in an application approved
16 under paragraph (1) to pay part of the compensation of
17 students employed in professions referred to in subsection
18 (a) (1), except students employed in any branch of the
19 Government of the United States, as part of a program for
20 which a grant has been approved pursuant to this
21 subsection.”

22 (d) Section 807 of such Act (as redesignated by sub-
23 section (c) of this section) is amended by striking out
24 “\$30,000,000” and inserting in lieu thereof “\$45,000,000”.

93D CONGRESS
1ST SESSION

S. 892

IN THE SENATE OF THE UNITED STATES

FEBRUARY 19, 1973

MR. SPARKMAN (for himself and Mr. TOWER) (by request) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To amend section 404 of the National Housing Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 404 of the National Housing Act, as amended,
4 is amended to read as follows:

5 “SEC. 404. (a) (1) The Corporation shall establish a
6 primary reserve which shall be the general reserve of the
7 Corporation and a secondary reserve to which shall be
8 credited the amounts of the prepayments made by insured
9 institutions pursuant to former provisions of subsection (d)
10 and the credits made pursuant to the first sentence of sub-
11 section (e).

2

1 “(2) The Corporation may accomplish the purposes and
2 provisions of this section by rules, regulations, orders, or
3 otherwise as it may consider necessary or appropriate.

4 “(b) (1) Each institution whose application for insur-
5 ance is approved by the Corporation shall pay to the Cor-
6 poration, in such manner as it shall prescribe, a premium
7 for such insurance equal to one-twelfth of 1 per centum of
8 the total amount of all accounts of the insured members of
9 such institution. Such premium shall be paid at the time the
10 certificate is issued by the Corporation under section 403,
11 and thereafter annually, except that under regulations pre-
12 scribed by the Corporation such premium may be paid semi-
13 annually.

14 “(2) If, at the close of any December 31, the primary
15 reserve equals or exceeds 2 per centum of the total amount
16 of all accounts of insured members of all insured institutions
17 as of such close, no premium under paragraph (1) of this
18 subsection shall be payable by any insured institution with
19 respect to its premium year beginning during the year com-
20 mencing on May 1 next succeeding such December 31,
21 except that the foregoing provisions of this sentence shall
22 not be applicable to any insured institution with respect to
23 any of the twenty premium years beginning with the pre-
24 mium year commencing with the date on which such cer-
25 tificate is issued.

3

1 “(c) The Corporation is further authorized to assess
2 against each insured institution additional premiums for in-
3 surance until the amount of such premiums equals the amount
4 of all losses and expenses of the Corporation; except that the
5 total amount so assessed in any one year against any such
6 institution shall not exceed one-eighth of 1 per centum of
7 the total amount of the accounts of its insured members.

8 “(d) (1) The Corporation shall not, on or after the date
9 of enactment of this sentence, accept or receive further pay-
10 ments in the nature of prepayments of future premiums as
11 was formerly required by this subsection (including any such
12 payments which have accrued or are payable under such
13 former provisions). When no insured institution has any pro-
14 rata share of the secondary reserve, or has any such share
15 not immediately payable to it, the Corporation may take such
16 steps as it may deem appropriate to close out and discontinue
17 the secondary reserve.

18 “(2) The Corporation may provide for the adjustment
19 of payments made under former provisions of this subsection
20 or made or to be made under subsections (b) and (c) of this
21 section in cases of merger or consolidation, transfer of bulk
22 assets or assumption of liabilities, and similar transactions, as
23 defined by the Corporation for the purposes of this paragraph.

24 “(e) The Corporation shall credit to the secondary
25 reserve, as of the close of each calendar year a return on

4

1 the outstanding balances of the secondary reserve, during
2 such calendar year, as determined by the Corporation, at a
3 rate equal to the average annual rate of return to the Cor-
4 poration during the year ending at the close of November
5 30 of such calendar year, as determined by the Corporation,
6 on the investments held by the Corporation in obligations
7 of, or guaranteed as to principal and interest by, the United
8 States. Except as provided in subsections (f) and (g), the
9 secondary reserve shall be available to the Corporation
10 only for losses of the Corporation and shall be so available
11 only to such extent as other accounts of the Corporation
12 which are available therefor are insufficient for such losses.
13 No right, title, or interest of any institution in or with re-
14 spect to its pro rata share of the secondary reserve shall
15 be assignable or transferable whether by operation of law or
16 otherwise, except to such extent as the Corporation may
17 provide for transfer of such pro rata share in cases of merger
18 or consolidation, transfer of bulk assets or assumption of
19 liabilities, and similar transactions, as defined by the Cor-
20 poration for purposes of this sentence.

21 “(f) If (i) the status of an insured institution as an
22 insured institution is terminated pursuant to any provision
23 of section 407 or the insurance of accounts of an insured
24 institution is otherwise terminated, (ii) a conservator, re-
25 ceiver, or other legal custodian is appointed for an insured

5

1 institution under the circumstances and for the purpose set
2 forth in subdivision (d) of section 401, or (iii) the Corpora- ,
3 tion makes a determination that for the purposes of this sub-
4 section an insured institution has gone into liquidation, the
5 Corporation shall pay in cash to such institution its pro rata
6 share of the Secondary Reserve, in accordance with such
7 terms and conditions as the Corporation may prescribe, or,
8 at the option of the Corporation, the Corporation may ap-
9 ply the whole or any part of the amount which would other-
10 wise be paid in cash toward the payment of any indebted-
11 ness or obligation, whether matured or not, of such institu-
12 tion to the Corporation, then existing or arising before such
13 payment in cash: *Provided*, That such payment or such ap-
14 plication need not be made to the extent that the provisions
15 of the exception in the last sentence of subsection (e) are
16 applicable.

17 “(g) If, at the close of any December 31, occurring on
18 or after the date of enactment of paragraph (1) of subsection
19 (d) of this section, the aggregate of the primary reserve and
20 the secondary reserve equals or exceeds $1\frac{1}{4}$ per centum of
21 the total amount of all accounts of insured members of all
22 insured institutions but the primary reserve does not equal
23 or exceed 2 per centum of such base, each insured institution’s
24 pro rata share of the secondary reserve shall, during the year

6

1 beginning with May 1 next succeeding such close, be used,
2 to the extent available, to discharge such institution's obliga-
3 tion for its premium under subsection (b) for the premium
4 year beginning in such year, but only to the extent of such
5 percentage, to be the same for all insured institutions and
6 to be not less than 30 nor more than 70 per centum of such
7 premium, as the Corporation may determine; and the use
8 of such pro rata shares as provided in this sentence shall
9 continue unless and until the next sentence or the last sen-
10 tence of this subsection shall become operative. If, at the
11 close of any December 31 occurring before the last sentence
12 of this subsection shall become operative, the aggregate of
13 the primary reserve and the secondary reserve is not at
14 least equal to $1\frac{1}{4}$ per centum of the total amount of all
15 accounts of insured members of all insured institutions, the
16 use of any insured institution's pro rata share of the sec-
17 ondary reserve under the first sentence of this subsection
18 shall terminate with respect to its premium under subsection
19 (b) for the premium year beginning during the calendar
20 year commencing on May 1 next succeeding such December
21 31, and such termination shall continue unless and until the
22 first sentence of this subsection shall become operative. If, at
23 the close of any December 31, the primary reserve equals
24 or exceeds such 2 per centum, the Corporation shall, at such
25 time (which shall be the same for all insured institutions

7

1 and shall not be later than May 1 next succeeding such
2 close) and in such manner as the Corporation shall deter-
3 mine, pay in cash to each insured institution its pro rata
4 share of the secondary reserve.

5 “(h) (1) Each insured institution shall make such de-
6 posits in the Corporation as may from time to time be re-
7 quired by call of the Federal Home Loan Bank Board. Any
8 such call shall be calculated by applying a specified percent-
9 age, which shall be the same for all insured institutions, to the
10 total amount of all withdrawable or repurchasable shares,
11 investment certificates, and deposits in each insured insti-
12 tution. No such call shall be made unless such Board deter-
13 mines that the total amount of such call, plus the outstanding
14 deposits previously made pursuant to such calls, does not
15 exceed 1 per centum of the total amount of all withdrawable
16 or repurchasable shares, investment certificates, and deposits
17 in all insured institutions. For the purposes of this subsection,
18 the total amounts hereinabove referred to shall be determined
19 or estimated by such Board or in such manner as it may
20 prescribe.

21 “(2) The Corporation shall credit as of the close of each
22 calendar year, to each deposit outstanding at such close, a
23 return on the outstanding balance, as determined by the Cor-
24 poration, of such deposit during such calendar year, at a
25 rate equal to the average annual rate of return, as determined

1 by the Corporation, to the Corporation during the year end-
2 ing at the close of November 30 of such calendar year, on
3 the investments held by the Corporation in obligations of,
4 or guaranteed as to principal and interest by, the United
5 States.

6 “(3) The Corporation in its discretion may at any
7 time repay all such deposits, or repay pro rata a portion
8 of each of such deposits, in such manner and under such
9 procedure as the Corporation may prescribe. Any procedure
10 for such pro rata repayment may provide for total repay-
11 ment of any deposit, if total repayment of any and all
12 deposits of equal or smaller amount is likewise provided for.

13 “(4) The provisions of subsection (f) of this section
14 and of the last sentence of subsection (e) of this section
15 shall be applicable to deposits under this subsection, and for
16 the purposes of this subsection the references in such sub-
17 section (f) and such last sentence to the prepayments and the
18 pro rata shares therein mentioned shall be deemed instead
19 to be references respectively to the deposits under this sub-
20 section and the pro rata shares of the holders thereof, and the
21 references in such subsection (f) to that subsection (except
22 the last such reference) and to subsection (d) of this section
23 shall be deemed instead to be references to this subsection.”

93D CONGRESS
1ST SESSION

S. 898

IN THE SENATE OF THE UNITED STATES

FEBRUARY 19, 1973

Mr. HOLLINGS (for himself and Mr. CRANSTON) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To authorize insurance in connection with loans to finance the purchase of, and improvements to, lots on which to place mobile homes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) section 2 (a) of the National Housing Act is
4 amended by inserting immediately before the last sentence
5 a new sentence as follows: "A loan for the purchase of a
6 mobile home may include an amount to finance the acqui-
7 sition of a lot on which to place such home and to pay
8 expenses reasonably necessary for the appropriate prepara-
9 tion of such lot, including but not limited to, the installa-

1 tion of utility connections, sanitary facilities and paving,
2 and the construction of a suitable pad.”

3 (b) Subsection (b) of section 2 of such Act is amended
4 by striking out all that precedes the second proviso and
5 inserting in lieu thereof the following:

6 “(b) Insurance may be granted under this section to
7 any approved financial institution with respect to any obli-
8 gation representing a loan, advance of credit, or purchase
9 by it for a purpose described in subsection (a), subject to
10 the following limitations with respect to amounts and
11 maturities:

12 “(1) Except in the case of an obligation financing
13 the purchase of a mobile home, the principal amount of
14 the obligation shall not exceed \$5,000, and the maturity
15 of the obligation shall not exceed three years and thirty-
16 two days (seven years and thirty-two days in any case
17 where the Secretary determines that an extension in such
18 period is in the public interest after giving consideration
19 to the general effect of the extension upon borrowers, the
20 building industry, and the general economy) : *Provided*,
21 That the foregoing limitations on the maturity of any
22 such obligation shall not apply if the loan, advance of
23 credit, or purchase is for the purpose of financing the
24 construction of a new structure for use in whole or in
25 part for agricultural purposes.

3

1 “(2) (A) In the case of an obligation financing the
2 purchase of a mobile home only, the principal amount of
3 the obligation shall not exceed (i) \$10,000 (\$15,000
4 in the case of a mobile home composed of two or more
5 modules), and (ii) such additional amount as the Sec-
6 retary shall by regulation prescribe as appropriate to
7 cover the cost of necessary site preparation for the lot
8 on which the home is to be placed. The maximum ma-
9 turity of any such obligation shall not exceed twelve
10 years and thirty-two days (fifteen years and thirty-two
11 days in the case of a mobile home composed of two or
12 more modules).

13 “(B) In the case of an obligation financing the pur-
14 chase of a mobile home and an undeveloped lot on
15 which to place the home, the principal amount of the
16 obligation shall not exceed (i) the maximum amount
17 under subparagraph (A), and (ii) such amount not to
18 exceed \$5,000 as may be necessary to cover the cost
19 of purchasing the lot. The maximum maturity of any
20 such obligation shall not exceed fifteen years and thirty-
21 two days.

22 “(C) In the case of an obligation financing the
23 purchase of a mobile home and a suitably developed
24 lot on which to place the home, the principal amount

1 of the obligation shall not exceed (i) the maximum
2 amount under subparagraph (A) (i), and (ii) such
3 amount not to exceed \$7,500 as may be necessary to
4 cover the cost of purchasing the lot. The maximum ma-
5 turity of any such obligation shall not exceed fifteen
6 years and thirty-two days.

7 In addition to the limitations set forth in paragraphs (1)
8 and (2), no insurance shall be granted under this section
9 to any such institution with respect to any such obligation
10 unless the obligation bears such interest and contains such
11 other terms, conditions, and restrictions as the Secretary
12 shall prescribe in order to make credit available for the pur-
13 poses of this section:".

93^d CONGRESS
1st SESSION

S. 899

IN THE SENATE OF THE UNITED STATES

FEBRUARY 19, 1973

Mr. HOLLINGS (for himself and Mr. CRANSTON) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To extend and amend laws relating to housing and urban development, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That title V of the Housing Act of 1949 is amended by add-
4 ing at the end thereof a new section as follows:

5 “MOBILE HOMES

6 “SEC. 525. (a) As used in this title, the term ‘housing’
7 shall, notwithstanding any other provision of this title and to
8 the extent deemed practicable by the Secretary, include
9 mobile homes.

10 “(b) With respect to mobile homes financed under this
11 title, the Secretary shall—

2

1 “(1) prescribe minimum property standards to as-
2 sure the livability and durability of the mobile home and
3 the suitability of the site on which it is to be located,
4 and

5 “(2) obtain assurances from the borrower that the
6 mobile home will be placed on a site which complies with
7 standards prescribed by the Secretary and with appli-
8 cable local requirements.

9 Loans under this title for the purchase of mobile homes shall
10 be on the same terms and conditions as are applicable under
11 section 2 of the National Housing Act to obligations financing
12 the purchase of mobile homes.”

93D CONGRESS
1ST SESSION

S. 910

IN THE SENATE OF THE UNITED STATES

FEBRUARY 19, 1973

Mr. HOLLINGS introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To amend title V of the Housing Act of 1949 to assure borrowers of the right to employ qualified attorneys of their choice in performing necessary legal services in connection with loans under that title.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That section 510 of the Housing Act of 1949 is amended—

4 (1) by inserting “(a)” after “SEC. 510.”;

5 (2) by redesignating paragraphs (a)–(g) as para-
6 graphs (1)–(7) respectively;

7 (3) by redesignating subparagraphs (1) and (2)
8 of paragraph (3) (as hereinabove redesignated) as
9 subparagraphs (A) and (B) respectively; and

1 (4) by adding at the end thereof a new subsection
2 as follows:

3 “(b) The Secretary shall accord to all qualified attor-
4 neys an equal opportunity to participate in providing such
5 title, closing, or other legal services as may be required by
6 persons receiving direct or insured loans under this title.”

S. 971

FEBRUARY 22, 1973

Mr. TAFT (for himself and Mr. CRANSTON) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To help preserve and improve low- and moderate-income housing.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the “Home Preservation Act
4 of 1973”.

5 FINDINGS AND POLICY

6 SEC. 2. (a) The Congress affirms the national goal, as
7 set forth in section 2 of the Housing Act of 1949, of "a
8 decent home and suitable living environment for every
9 American family". The Congress finds, however, that policies
10 designed to contribute to the achievement of this goal have

2

1 not directed sufficient attention and resources to the preser-
2 vation of existing housing and neighborhoods, that the
3 deterioration and abandonment of housing for the Nation's
4 lower income families has accelerated over the last decade,
5 and that this acceleration has contributed to neighborhood
6 disintegration and has partially negated the progress toward
7 the national housing goal which has been achieved through
8 new housing construction.

9 (b) The Congress declares that a greater effort should
10 be made to encourage the preservation of existing housing
11 and neighborhoods inhabited by lower income families, under
12 conditions where such efforts are economically justifiable and
13 have reasonable prospects for success, and that such efforts
14 should utilize the resources and capabilities of the Federal
15 Government, State and local governments, and private en-
16 terprise. The Congress further declares that such an effort
17 should concentrate, to a greater extent than it has in the past,
18 on housing and neighborhoods where deterioration is evi-
19 dent but has not yet become acute.

20 TITLE I—REFINANCING FOR HOME

21 PRESERVATION

22 SEC. 101. Title II of the National Housing Act is
23 amended by adding at the end thereof the following new
24 section:

1 “REFINANCING FOR HOME PRESERVATION

2 “SEC. 244. (a) The purpose of this section is to encour-
3 age the preservation and upgrading of existing low- and
4 moderate-income housing through a program of mortgage
5 insurance, designed to enable residential property owners
6 who cannot afford additional monthly housing expenses to
7 undertake needed housing repairs and renovations and mod-
8 erate, but not necessarily substantial, housing rehabilitation
9 and to help combat the phenomenon of housing abandon-
10 ment.

11 “(b) The Secretary is authorized to insure any mort-
12 gage in accordance with the provisions of this section, upon
13 such terms and conditions as he may prescribe, and to make
14 commitments for such insurance prior to the date of the
15 execution of any mortgage or any disbursement thereon.
16 The Secretary shall establish procedures to expedite, to the
17 maximum extent feasible, the processing and approval of
18 applications for insurance hereunder.

19 “(c) As used in this section—

20 “(1) the term ‘low- or moderate-income housing’
21 means a building containing one or more dwelling units,
22 which is predominantly occupied by families or indi-
23 viduals of low or moderate income, as determined by
24 the Secretary in a manner consistent with the purpose
25 of this section; and

4

1 “(2) the term ‘sound condition’ means a condition
2 which meets all State and local requirements relating
3 to housing conditions, public health or safety other than
4 the requirements of any building code, except that in
5 the event such local requirements are absent or inad-
6 equiate, the Secretary may impose alternative appro-
7 priate standards; and

8 “(3) the terms ‘mortgage’, ‘mortgagee’, and ‘mort-
9 gagor’ shall have the same meaning as in section 201
10 of this Act.

11 “(d) A mortgage insured under subsection (b) shall—

12 “(1) cover predominantly residential property
13 which provides either low- or moderate-income housing
14 in sound condition or housing which is not in sound
15 condition but which is capable of being placed in sound
16 condition with assistance provided under this section;

17 “(2) cover property located in a neighborhood or
18 area which is threatened by housing deterioration or
19 abandonment but which is reasonably stable and con-
20 tains sufficient public facilities and services to be rea-
21 sonably capable of supporting long-term values, or which
22 is to be improved through community programs of
23 neighborhood preservation or rehabilitation;

24 “(3) secure an indebtedness the principal amount
25 of which does not exceed the sum of—

5

1 “(A) the amount required to refinance exist-
2 ing indebtedness secured by the property;

3 “(B) such initial mortgage service charges,
4 points, closing costs, and appraisal, inspection, or
5 other costs and fees as the Secretary shall approve
6 pursuant to regulations consistent with the purposes
7 of this section; and

8 “(C) the estimated cost of any repairs and
9 improvements required by subsection (e) and of all
10 additional repairs and improvements accomplished
11 with funds provided by any loan insurable here-
12 under;

13 “(4) provide for complete amortization by periodic
14 payments within such term satisfactory to the Secretary,
15 as the mortgagor and mortgagee shall agree upon, based
16 upon the projected remaining economic life of the struc-
17 ture after repairs and improvements have been made,
18 but not to exceed, in any event, twenty-five years; and

19 “(5) bear interest on the amount of the principal
20 obligation outstanding at any time at a rate not in excess
21 of such per centum per annum as the Secretary shall by
22 regulation prescribe as necessary to meet the applicable
23 mortgage market.

24 Notwithstanding any other provision of this section, the Sec-
25 retary's insurance obligation with respect to the principal of

6

1 a mortgage may not exceed 90 per centum of the sum of—

2 “(A) the appraised value of the property as of the
3 date the mortgage is accepted for insurance (except that
4 the Secretary may exclude any increase in that value
5 which he determines to be caused by governmental
6 actions under this section) ;

7 “(B) such initial mortgage service charges, points,
8 closing costs, and appraisal, inspection, or other costs
9 and fees as the Secretary shall, by regulation, and con-
10 sistent with the purpose of this section, approve; and

11 “(C) the cost of any repairs and improvements re-
12 quired by subsection (e) and of all additional repairs
13 and improvements provided by any loan insurable here-
14 under,

15 except that in the case of refinancing by a nonprofit or co-
16 operative described in subsection (e) (3), the obligation of
17 the Secretary may not exceed 98 per centum of such sum.

18 “(e) The Secretary shall prescribe such terms and con-
19 ditions as he deems necessary to assure that—

20 “(1) refinancing pursuant to this subsection results
21 in the making of any repairs to the property that are nec-
22 essary to place it in a sound condition or enables the
23 mortgagor to pay off a mortgage containing a balloon
24 payment provision, and is not used primarily to reduce
25 the monthly debt service payable by the mortgagor ex-

1 cept in hardship cases as determined by the Secretary;

2 “(2) in the case of refinancing pursuant to this
3 section which is used primarily to repair and improve
4 the property, a reasonable proportion of the loan pro-
5 ceeds shall be used to finance repairs and improvements;

6 “(3) the mortgagor or a member of his immediate
7 family shall have owned the property for a period of
8 not less than three years prior to such refinancing, unless
9 the mortgagor is a cooperative or nonprofit certified by
10 the Secretary as eligible for insurance under this section;

11 “(4) the property will be continuously maintained
12 in sound condition for the period of the loan; and

13 “(5) in the case of refinancing pursuant to this
14 section which involves a rental project containing more
15 than four dwelling units—

16 “(A) the mortgagor shall deposit in a check-
17 ing account to be used solely for maintenance
18 expenditures not less than that percentage of his
19 gross rental receipts which he designates and the
20 Secretary approves as necessary or appropriate to
21 maintain the building in sound condition;

22 “(B) during the mortgage term no rental
23 increases may be made except those which are
24 necessary to offset actual and reasonable operating
25 expense increases;

1 “(C) no excessive rent increase has been made
2 in anticipation of refinancing pursuant to this sec-
3 tion; and

4 “(D) before any rental increase takes effect,
5 tenants will be afforded reasonable notice of the
6 proposed increase and a sufficient opportunity to
7 present written objections to the Secretary and to
8 be heard thereon.

9 “(f) Any mortgagee under a mortgage insured under
10 this section shall be entitled to receive the benefits of the
11 insurance authorized hereunder—

12 “(1) in accordance with the provisions of section
13 204 (a), which apply to mortgages insured under sec-
14 tion 203, if the mortgage is secured by property contain-
15 ing fewer than five dwelling units, and the provisions
16 of subsections (b), (c), (d), (g), (j), and (k) of sec-
17 tion 204 shall be applicable to such mortgages; or

18 “(2) in accordance with the provisions of section
19 207, if the mortgage is secured by property containing
20 more than four dwelling units, and the provisions of sub-
21 sections (d), (e), (h), (i), (j), (k), (l), and (n) of
22 section 207 shall be applicable to such mortgages,

23 except that all references contained in sections 204 and 207
24 to the ‘Mutual Mortgage Insurance Fund’ shall be construed
25 to refer to the ‘Special Risk Insurance Fund’ and all refer-

1 ences therein to sections 203 and 207 shall be construed to
2 refer also to section 244.

3 “(g) In carrying out his functions under this section, the
4 Secretary shall use his best efforts to enlist the support and
5 cooperation of State and local governments in establishing
6 and maintaining programs which contribute to the achieve-
7 ment of the purposes of this section, including the provision
8 of adequate municipal services in low- and moderate-income
9 areas, particularly in areas threatened by building abandon-
10 ment, and in insuring, to the maximum extent feasible, the
11 administration of laws and ordinances relating to the existing
12 housing stock, including building codes, housing codes, health
13 and safety codes, zoning laws and property tax laws, in
14 a manner which will encourage maximum utilization of this
15 program in accordance with the purposes of this section.

16 “(h) The Secretary shall develop and maintain full
17 information and statistics regarding the utilization of and ex-
18 periences incurred under this program, which shall include
19 information and statistics concerning—

20 “(1) financial market conditions, including the in-
21 terest rates, payback periods, and other terms and con-
22 ditions affecting housing eligible to be refinanced here-
23 under;

24 “(2) the character, extent, and actual costs of re-

1 pairs, renovations, and moderate housing rehabilitation
2 undertaken hereunder;

3 “(3) factors affecting and statistics showing the
4 extent of actual and potential utilization of this program;

5 “(4) factors affecting the processing time of ap-
6 plications submitted hereunder and statistics showing
7 processing times actually experienced;

8 “(5) mortgage arrearages, defaults, and foreclosures
9 on mortgage loans insured hereunder and expenses
10 incurred as a result of such arrearages, defaults, and
11 foreclosures;

12 “(6) abuses of the program, actual or potential,
13 and remedial and punitive actions taken in connection
14 therewith; and

15 “(7) the costs of administering the mortgage in-
16 surance program provided by this section,

17 and shall submit to the Congress not later than February 15
18 of each year an annual report summarizing such information,
19 together with an analysis of the effectiveness and scope of
20 the program and recommendations for its improvement and
21 future utilization.

22 “(i) If the Secretary determines that the unavailability
23 of property insurance coverage is hindering the widespread
24 utilization of this program, he shall take all practicable steps
25 to insure that the protection and benefits of title XII of this
26 Act are utilized to provide adequate property insurance

1 coverage for mortgagors and mortgagees under this program.

2 “(j) If the Secretary determines that widespread utili-
3 zation of this program is hindered by the charging of points
4 or discounts by mortgagees, he shall take steps to imple-
5 ment the Government National Mortgage Association’s au-
6 thority under sections 305 (j) and 302 (c) of this Act to
7 purchase and make commitments to purchase mortgages
8 insured under this section, at a price equal to the unpaid
9 principal amount thereof at the time of purchase, with ad-
10 justments for interest and any comparable items, and to sell
11 such mortgages at any time at a price within the range of
12 market prices for the particular class of mortgages involved
13 at the time of sale as determined by the Association.”

14 SEC. 102. (a) Section 238 (b) of the National Housing
15 Act is amended—

16 (1) by striking out “and 243” each time it appears
17 and inserting in lieu thereof “243, and 244”;

18 (2) by striking out “and 237” and inserting in
19 lieu thereof “237, and 244”; and

20 (3) by striking out “or 243” and inserting in lieu
21 thereof “243, or 244”.

22 (b) The second sentence of section 305 (g) of such Act
23 is amended by inserting between “and” and “no such com-
24 mitment” the following: “, unless the mortgage is insured
25 under section 244,”.

1 (c) Section 235 (i) (3) (A) of such Act is amended by
2 inserting after “Housing and Urban Development Act of
3 1965” the following: “: *Provided further*, That the mortgage
4 may involve an existing dwelling or a family unit in an
5 existing project if such mortgage involves refinancing con-
6 sistent with the purposes of section 244 and subject to the
7 provisions of subsections (d) and (e) of such section, other
8 than the requirement in subsection (e) (1) of such section
9 that refinancing not be used primarily to reduce the monthly
10 debt service payable by the mortgagor except in hardship
11 cases.”

12 **TITLE II—HOME REPAIR LOANS FOR THE**
13 **ELDERLY AND HANDICAPPED**

14 **SEC. 201.** (a) In order to assist elderly or handicapped
15 families to repair and improve their homes and thereby pro-
16 vide themselves with decent, safe, and sanitary housing, the
17 Secretary is authorized to provide assistance in the form of
18 loans as provided for in subsection (c), and in the form of
19 advances when necessary as determined under subsection
20 (d), to elderly and handicapped families who own and oc-
21 cupy residential property containing one, two, three, or four
22 dwelling units, to cover the cost of repairs, improvement, and
23 other rehabilitation necessary to protect or improve the basic
24 livability or utility of such property.

25 (b) For the purpose of this section, the term “elderly or

1 handicapped families" has the same meaning as in section
2 202 of the Housing Act of 1959.

3 (c) (1) The Secretary may make a loan with respect
4 to residential property if he determines that—

5 (A) the applicant is without sufficient resources to
6 afford the necessary repairs, improvements, or other re-
7 habilitation;

8 (B) the applicant is unable to secure the necessary
9 fund for such repairs, improvements, or other rehabili-
10 tation from other sources upon terms and conditions
11 which he could reasonably be expected to fulfill; and

12 (C) the loan is an acceptable risk taking into
13 consideration the need for rehabilitation, the ability of
14 the neighborhood to provide a suitable living environ-
15 ment, the security available for the loan, including the
16 applicant's equity in the property, and the ability of the
17 applicant to repay the loan.

18 (2) Except as provided in subsection (d), assistance
19 under this section with respect to any property shall be in
20 the form of a loan in a principal amount equal to the lesser
21 of (A) the cost of the necessary repairs and improvements
22 of such property as determined by the Secretary, or (B)
23 \$5,000. Any such loan shall bear interest at the rate of
24 3 per centum per annum on the amount of the principal

1 obligation outstanding at any time, provide for complete
2 amortization by periodic payments within a period not
3 exceeding fifteen years, be secured as determined by the
4 Secretary and be subject to such other terms and conditions
5 as the Secretary may prescribe to assure that the purpose
6 of this section is carried out.

7 (d) (1) In any case where assistance other than (or
8 in addition to) a loan under subsection (c) is necessary to
9 enable an elderly or handicapped family to carry out repairs,
10 improvements, or other rehabilitation because an elderly
11 or handicapped family cannot afford all or part of the re-
12 quired payments of principal and interest on the loan, the
13 Secretary is authorized to make an advance to such family
14 to cover or assist in covering the cost of the necessary
15 repairs, improvements, or other rehabilitation. The amount
16 of such advance shall be the cost of the repairs, improve-
17 ments, or other rehabilitation (but not more than \$5,000),
18 reduced by the principal amount of any loan made under
19 subsection (c) in connection with the same repairs, im-
20 provements, or other rehabilitation.

21 (2) Any advance made to an elderly or handicapped
22 family under this subsection shall be a repayable advance
23 and as such shall create a lien on the property in favor of
24 the Secretary in an amount equal to the amount of the
25 advance, and such lien shall be duly recorded. Such advance

15

1 shall be repaid (without interest) and the lien discharged
2 at such time as the property is subsequently sold or other-
3 wise transferred to another person (other than to the owner's
4 surviving spouse) and shall be subject to such other terms
5 and conditions as the Secretary may prescribe.

6 (e) The Secretary is authorized to delegate to or use
7 as his agent any Federal or local public or private agency or
8 organization to the extent he determines it to be desirable
9 to carry out the objectives of this section in the area involved,
10 and to reimburse any such agency for necessary expenses for
11 services and facilities for the servicing of loans or advances
12 made under this title.

13 (f) All funds received and loans, repayable advances, or
14 other disbursements made by the Secretary in carrying out
15 his functions under this title shall be credited or charged, as
16 appropriate, to the Home Preservation Loan Fund estab-
17 lished by section 401 of this Act.

18 TITLE III—EMERGENCY HOME PRESERVATION

19 LOANS

20 STATEMENT OF PURPOSE

21 SEC. 301. The purpose of this title is—

22 (1) to prevent mortgage defaults, distress sales, and
23 the abandonment of homes, particularly in cases where a
24 mortgage insured or guaranteed by the United States
25 Government is involved, by mortgagors who are tem-

16

porarily unemployed or whose income is drastically reduced because of the death, illness, or disability of the principal mortgagor, and who require the assistance available under this title for a reasonable period of time in order to make the necessary financial adjustments; and

(2) to prevent mortgage defaults, distress sales, and the deterioration and abandonment of homes, particularly in cases where a mortgage insured or guaranteed by the United States Government is involved, by homeowners who are unable to finance on reasonable terms, through conventional means or other federally assisted home repair programs, the full cost of repairs necessary to protect basic livability or utility of their homes.

PERIODIC PAYMENT ASSISTANCE

SEC. 302. (a) The Secretary of Housing and Urban Development is authorized, upon such terms and conditions as he may prescribe, to enter into a loan agreement with a mortgagor who is temporarily unable to make monthly mortgage payments as a result of the death, disability, illness, or unemployment of the principal mortgagor for reasons beyond his control, which agreement provides for the making of disbursements on that loan in the form of periodic payments to a mortgagee on behalf of that mortgagor.

1 (b) The amount of any such periodic payment with
2 respect to any mortgage may not exceed the amount of
3 the monthly payment required under the mortgage for
4 principal, interest, taxes, insurance, and mortgage insurance
5 premium. Payments on behalf of any mortgagor may not be
6 made for more than twelve months.

7 (c) No such periodic payments may be made unless the
8 Secretary determines that—

9 (1) the mortgagor has sought to extend the time
10 permitted for the curing of the default and has sought
11 to modify the terms of the mortgage by recasting any
12 unpaid amount owed on the mortgage over an addi-
13 tional period of time beyond the term of the mortgage;

14 (2) the making of such payments, together with
15 such other assistance as may be available from public or
16 private sources, can reasonably be expected to result in a
17 curing of the default within twelve months; and

18 (3) the mortgagor has executed a loan agreement
19 which meets the requirements of section 304.

20 (d) In carrying out the purpose of this section, the Sec-
21 retary shall issue regulations limiting the benefits of this sec-
22 tion to mortgagors who, except for the assistance provided
23 by this section, have no other practicable means of curing
24 the default in their mortgage obligations. The Secretary shall
25 encourage the use of such other means as may be appropri-

1 ate to carry out the purpose of this section and section 301
2 (1).

3 REPAIR AND IMPROVEMENT LOANS

4 SEC. 303. (a) The Secretary is authorized, upon such
5 terms and conditions as he may prescribe, to make home
6 repair loans to homeowners who are unable to finance on
7 reasonable terms, by any means other than the assistance
8 under this section, the full cost of repairs necessary to main-
9 tain their homes in a suitable living condition.

10 (b) No such loan may be made unless the Secretary
11 determines that—

12 (1) the homeowner has applied for a home repair
13 loan insured pursuant to section 2 of the National Hous-
14 ing Act for the maximum principal amount reasonably
15 repayable by him over the maximum repayment period
16 prescribed for such loans, taking into account his ability
17 to meet monthly payments on such a loan, and if any
18 such loan was available to him, the homeowner received
19 such loan in such principal amount;

20 (2) the repairs are necessary to establish or main-
21 tain the basic livability of the home, and the cost of the
22 repairs exceeds the principal amount of the loan referred
23 to in the preceding clause;

24 (3) the principal amount of the loan made by the
25 Secretary, when added to the principal amount of the

1 loan referred to in clause (1), does not exceed \$5,000,
2 or the cost of the repairs, whichever is less; and

3 (4) refinancing pursuant to section 244 of the
4 National Housing Act is unavailable, or such refinancing
5 would be a less desirable means of providing the neces-
6 sary assistance to the homeowner than the provision of
7 a loan under this section.

8 LOAN TERMS

9 SEC. 304. (a) Any loan under this title shall—

10 (1) bear interest at not to exceed a rate determined
11 by the Secretary of the Treasury, taking into considera-
12 tion the current average market yield on outstanding
13 marketable obligations of the United States with re-
14 maining periods to maturity of ten to twelve years,
15 adjusted to the nearest one-eighth of 1 per centum, plus
16 one-quarter of 1 per centum per annum;

17 (2) provide for complete amortization by periodic
18 payments within such reasonable period (commencing
19 after any period of deferral under clause (3)) as the
20 Secretary may prescribe in order that, to the maximum
21 extent practicable, the homeowner or mortgagor not be
22 required to pay an excessive proportion of his monthly
23 income for housing;

24 (3) provide that repayment may be deferred until
25 (A) the first mortgage on the property with respect

1 to which the loan under this title was made has been
2 repaid, or (B) the Secretary is satisfied that repayment
3 on reasonable terms can proceed in an orderly fashion
4 without requiring the homeowner or mortgagor to pay
5 an excessive proportion of his monthly income for hous-
6 ing, whichever occurs first; and

7 (4) comply with such other terms, conditions, and
8 restrictions as the Secretary may prescribe.

9 Notwithstanding any other provision of this section, repay-
10 ment on any loan may be deferred for a maximum period
11 of five years unless the borrower is a mortgagor whose mort-
12 gage is insured or guaranteed by the United States Gov-
13 ernment, except that the repayment of any loan made
14 pursuant to section 303 may be deferred until any loan
15 referred to in section 303 (b) (1) has been repaid.

16 (b) Any loan made under this title shall be secured by
17 a lien against the property with respect to which the loan is
18 made, and such lien shall be duly recorded. Notwithstanding
19 any other provision of this title, upon the sale or other simi-
20 lar transfer of such property, the Secretary shall, to the maxi-
21 mum extent practicable, perfect such lien.

22 (c) Notwithstanding any other provision of law, the
23 Secretary is authorized (1) to make expenditures to pre-
24 serve and protect his interest in any security for, or the lien
25 or priority of the lien securing, any loan or other indebted-

ness owing to the Secretary or the United States under this title, and (2) to bid for and to purchase at any foreclosure or other sale or otherwise acquire property pledged, mortgaged, conveyed, attached, or levied upon to secure the payment of any loan or other indebtedness owing to by the Secretary or by the United States under this title. The authority conferred by this subsection may be exercised as provided in the last sentence of section 204 (g) of the National Housing Act.

(d) During any period when the repayment of a loan is deferred pursuant to subsection (a) (3), interest shall accrue on and be added to the unpaid principal balance of the loan.

LOAN FUNDS

SEC. 305. All funds received and loans or other disbursements made by the Secretary in carrying out his functions under this title with respect to mortgages insured or guaranteed under the provisions of chapter 37 of title 38, United States Code, the National Housing Act, or title V of the Housing Act of 1949 shall be credited or charged, as appropriate, to the Special Risk Insurance Fund established under section 238 of the National Housing Act. All funds received and loans or other disbursements made by the Secretary in carrying out his functions under this title with respect to any property which is not subject to a mortgage insured or guaranteed by the United States under such pro-

1 visions shall be credited or charged, as appropriate, to the
2 Home Preservation Loan Fund authorized in section 401 of
3 this Act.

4 TITLE IV—MISCELLANEOUS

5 HOME PRESERVATION LOAN FUND

6 SEC. 401. There is created a Home Preservation Loan
7 Fund (hereinafter referred to as the “fund”) which shall
8 be used by the Secretary as a revolving fund for carrying
9 out his loan functions under both title III of this Act (but
10 only with respect to any property which is not subject to
11 a mortgage insured or guaranteed by the United States)
12 and title II of this Act. There is authorized to be appropri-
13 ated to the fund the sum of \$50,000,000. All payments
14 made by mortgagors with respect to such loans, cash ad-
15 justments, the principal of and interest paid on debentures
16 which are the obligation of the fund, expenses incurred in
17 connection with or as a consequence of the acquisition and
18 disposal of property acquired under this section, and all ad-
19 ministrative expenses in connection with the loan insurance
20 operations under this section shall be credited or charged,
21 as appropriate, to the fund. There are authorized to be ap-
22 propriated such sums as may be necessary from time to time
23 to cover losses sustained by the fund in carrying out the
24 purposes of this section. Moneys in the fund not needed for
25 current operations of the fund shall be deposited with the

1 Treasury of the United States to the credit of the fund or
2 invested in bonds or other obligations of, or in bonds or
3 other obligations guaranteed by the United States. The Sec-
4 retary, with the approval of the Secretary of the Treasury,
5 may purchase in the open market debentures which are the
6 obligation of the fund. Such purchases shall be made at a
7 price which will provide an investment yield of not less than
8 the yield obtained from other investments authorized by this
9 section. Debentures so purchased shall be canceled and not
10 reissued.

11 IMPROVED MAINTENANCE OF FEDERALLY ASSISTED
12 HOUSING

13 SEC. 402. In order to promote improved maintenance
14 practices and thereby to avoid unnecessary housing de-
15 terioration and to assist mortgagors whose mortgages are
16 insured under section 235 of the National Housing Act in
17 meeting the responsibilities of homeownership, the Secre-
18 tary is authorized, on a demonstration basis and under such
19 conditions and circumstances as he deems appropriate, to
20 encourage such mortgagors to establish and maintain joint
21 checking accounts for maintenance expenditures with agen-
22 cies providing counseling services to such mortgagors under
23 section 101 (e) of the Housing and Urban Development Act
24 of 1968. No disbursement of funds from such joint checking
25 account shall be made without the authorization of both the

1 mortgagor and the agency providing counseling. A mort-
2 gagor shall contribute to such joint checking account a
3 monthly amount agreed upon by the agency providing coun-
4 seling services and the mortgagor, taking into account the
5 estimated normal monthly maintenance expense for the
6 dwelling owned by the mortgagor, but such monthly con-
7 tributions shall not be demanded when the beginning
8 monthly balance in such joint checking account exceeds
9 \$150. The agency providing counseling shall agree to the
10 disbursement of funds from the joint checking account upon
11 the request of the mortgagor, if such agency is satisfied that
12 such mortgagor intends to use the funds for home mainte-
13 nance or for emergency expenses. All such disbursements of
14 funds shall be accompanied by such counseling assistance as
15 the agency providing counseling deems appropriate to en-
16 courage effective and improved maintenance practices and
17 efficient use of maintenance funds. The Secretary is au-
18 thorized to undertake such variations of this demonstration
19 as he deems appropriate, and to demonstrate other methods
20 of improving maintenance and thereby prevent deterioration
21 of federally assisted housing. Such variations may include
22 the provision of cash bonuses to those families in federally
23 assisted housing who maintain their dwellings exceptionally
24 well relative to other such families in such housing. Within
25 three years, the Secretary shall recommend to Congress under

25

1 what circumstances and conditions, if any, and by what
2 methods, joint checking accounts for maintenance expendi-
3 tures similar to those authorized by this section should be
4 encouraged or required, and any other measures which he
5 finds will result in improved maintenance of housing. There
6 is authorized to be appropriated such sums as may be
7 necessary to carry out the provisions of this section.

8 PROCESSING OF INSURANCE APPLICATIONS

9 SEC. 403. The Secretary shall study the possibility and
10 desirability of transferring to mortgagees approved by the
11 Secretary all or some of the functions now performed by the
12 Department of Housing and Urban Development which re-
13 late to the processing and approval of applications for mort-
14 gage insurance under the programs carried out under the
15 provisions of the National Housing Act. Not later than six
16 months after the date of enactment of this Act, the Secre-
17 tary shall report his findings to the Committee on Banking,
18 Housing and Urban Affairs of the Senate and the Committee
19 on Banking and Currency of the House of Representatives.
20 The Secretary shall include in his report a list of those func-
21 tions relating to the processing and approval of applications
22 for insurance, if any, which should be performed by such
23 mortgagees, the need, if any, for safeguards such as coinsur-
24 ance to prevent mortgagees' abuse of their increased respon-
25 sibility, the form which any needed safeguards should take,

1 the extent to which any such safeguards could unduly dis-
2 courage mortgagees from participating in any insurance pro-
3 gram, and the need, if any, to provide compensation to the
4 mortgagees for the functions they would assume if the Sec-
5 retary's finding pursuant to this section were put into effect.

93^D CONGRESS
1ST SESSION

S. 1188

IN THE SENATE OF THE UNITED STATES

MARCH 13, 1973

Mr. BROCK (for himself, Mr. BEALL, Mr. BENNETT, Mr. DOLE, Mr. DOMINICK, Mr. FANNIN, and Mr. TOWER) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To promote the utilization of improved technology in federally assisted housing projects and to increase productivity in order to meet our national housing goals, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) any provision or requirement in any building
4 code or other local law or ordinance, or in any contract or
5 agreement, or any practice or other restraint which inter-
6 feres with or restricts the use of new or improved techniques,
7 methods, or materials or the use of preassembled products
8 in connection with any development, construction, reha-
9 bilitation, or maintenance activity assisted under any pro-

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1 gram administered by the Secretary of Housing and Urban
2 Development shall be unlawful with respect to such activity:
3 *Provided*, That nothing contained in this paragraph (a) shall
4 be construed to make unlawful any such provision, require-
5 ment, practice, or restraint if it is shown by a preponder-
6 ance of evidence (1) that such provision, requirement,
7 practice, or restraint is necessary to assure safe and healthful
8 working or living conditions and (2) that such technique,
9 method, material, or product fails to assure such safe and
10 healthful working or living conditions.

11 (b) Any person who is aggrieved because of any pro-
12 vision or requirement in any building code or other local law
13 or ordinance, or because of any contract, agreement, practice,
14 or other restraint unlawful under subsection (a) of this Act
15 may bring a civil action in any appropriate United States
16 district court notwithstanding any other provision of law and
17 without regard to the amount in controversy, or in any appro-
18 priate State or local court of general jurisdiction to obtain
19 equitable or preventive relief for violations of this section,
20 or for appropriate damages, and may request such relief, or
21 enter a claim for such damages, in any court whenever
22 relevant in connection with a defense to, or counterclaim in,
23 any suit or action brought against such person in that court,

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1 except that damages shall not be awarded where the person
2 bringing the action under this section is aggrieved by reason
3 of any provision or requirement in any building code or other
4 local law or ordinance.

93^D CONGRESS
1ST SESSION

S. 1299

IN THE SENATE OF THE UNITED STATES

MARCH 20, 1973

Mr. SYMINGTON introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To amend title I of the Housing Act of 1949 to permit a city whose population falls to below fifty thousand to convert any outstanding urban renewal projects from a two-thirds to a three-fourths capital grant formula.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That clause (i) of section 103 (a) (2) (B) of the Housing
4 Act of 1949 is amended to read as follows: “(i) a munici-
5 pality having, at the time the contract or contracts involved
6 are entered into, a population of fifty thousand or less ac-
7 cording to the most recent decennial census, and a munici-
8 pality, the population of which is in excess of fifty thousand
9 at the time the contract or contracts are entered into, having

1 a population at any time prior to the time the final grant
2 payment is made pursuant to such contract or contracts which
3 is substantially less than fifty thousand according to such
4 census,".

5 SEC. 2. The amendment made by subsection (a) shall
6 apply to contracts entered into under title I of the Housing
7 Act of 1949 on or after the date of the enactment of this
8 Act, and to any contract entered into under such title before
9 such date if the final grant payment has not been made pur-
10 suant thereto before such date.

THE GENERAL COUNSEL OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D. C. 20410

MAY 9 1973

Honorable John Sparkman
Chairman
Committee on Banking, Housing
and Urban Affairs
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

Subject: S. 1299, 93d Congress (Symington, et al)

This is in response to your request for the views of this Department on S. 1299, a bill "To amend title I of the Housing Act of 1949 to permit a city whose population falls to below fifty thousand to convert any outstanding urban renewal projects from a two-thirds to a three-fourths capital grant formula."

S. 1299 relates to urban renewal in cities which, after executing a loan and grant contract, experience a decline in population to fifty thousand or below, according to the decennial census figures. It would allow these cities to convert the applicable renewal projects from a two-thirds to a three-fourths capital grant formula retroactive to the execution date of existing contracts.

This Department opposes enactment of S. 1299.

In a conventional urban renewal project, the locality commits itself to providing a certain portion of net project costs when the capital grant contract is executed. We see no reason to reduce this local share amount retroactively merely because a city's population has declined sufficiently to make it eligible for a smaller local share in subsequent renewal project capital grant contracts. On the contrary, we believe that in many cases a retroactive adjustment as proposed by S. 1299 would result in a locality receiving an unwarranted advantage.

This would result, for example, if a city were to have only one year remaining on a ten year urban renewal contract. Under the bill, such a city would receive a credit of the difference between two-thirds and three-fourths of the net project costs for the nine years during which the city's population exceeded fifty thousand. We do not believe that this would result in an equitable allocation of the available resources for this program. Furthermore, if the logic of the proposal embodied in S. 1299 were correct, it would seem to follow that cities whose populations increase to above fifty thousand should also have their local share recalculated retroactively. We of course do not subscribe to this result and therefore would not favor the concept being adopted by the enactment of S. 1299.

The Office of Management and Budget has advised us that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

/s/ James L. Mitchell

James L. Mitchell

93D CONGRESS
1ST SESSION

S. 1322

IN THE SENATE OF THE UNITED STATES

MARCH 22, 1973

Mr. WILLIAMS (for himself, Mr. BENTSEN, Mr. MAGNUSON, Mr. MOSS, Mr. RANDOLPH, and Mr. SPARKMAN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To require the Secretary of Housing and Urban Development to disregard the increase in benefits under title II of the Social Security Act pursuant to Public Law 92-336 in determining eligibility or the amount of assistance under certain laws relating to low-income housing.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Full Benefits for Elderly
4 Tenants Act".

5 SEC. 2. The Secretary of Housing and Urban Develop-
6 ment shall not take into account the increase in monthly
7 insurance benefits for months after September 1972, under
8 title II of the Social Security Act resulting from the enact-

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1 ment of section 201 of Public Law 92-336, in determining
2 the income of an individual or family for the purpose of estab-
3 lishing the eligibility of, the rent for, or the amount of benefits
4 for, such individual or family under a program carried out
5 under any of the following provisions of law:

6 (1) Sections 2(1) and 23 of the United States
7 Housing Act of 1937.

8 (2) Section 101 of the Housing and Urban Devel-
9 opment Act of 1965.

10 (3) Sections 235 and 236 of the National Housing
11 Act.

93^d CONGRESS
1ST SESSION

S. 1329

IN THE SENATE OF THE UNITED STATES

MARCH 22, 1973

Mr. SPARKMAN (for himself and Mr. TOWER) introduced the following bill;
which was read twice and referred to the Committee on Banking, Housing
and Urban Affairs

A BILL

To amend laws relating to the Federal National Mortgage
Association.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) section 302 (a) (2) of the National Housing Act
4 is amended by striking out “the effective date established
5 pursuant to section 808 of the Housing and Urban Develop-
6 ment Act of 1968” and inserting in lieu thereof “September
7 1, 1968”, and by striking out “effective” in subparagraphs
8 (A) and (B).

9 (b) The third sentence of section 302 (a) (2) (B) of
10 such Act is amended—

2

1 (1) by inserting “or the metropolitan area
2 thereof” immediately after “District of Columbia”;

3 (2) by inserting “jurisdiction and” immediately be-
4 fore “venue”; and

5 (3) by striking out “resident thereof” and inserting
6 in lieu thereof “District of Columbia corporation”.

7 (c) Section 302 (b) (2) of such Act is amended by strik-
8 ing out “75 per centum” each place it appears and by insert-
9 ing in lieu thereof, in each such place, “80 per centum”.

10 (d) Clause (C) of the second sentence of section 302
11 (b) (2) of such Act is amended by striking out “private”.

12 (e) The last sentence of section 203 (b) (2) of such
13 Act is amended by striking out “which would be applicable
14 if the mortgage were insured by the Secretary of Housing
15 and Urban Development under section 203 (b) or 207 of the
16 National Housing Act” and inserting in lieu thereof “of the
17 first proviso to the first sentence of section 5 (c) of the Home
18 Owners’ Loan Act of 1933, except that such limitation shall
19 be increased 25 per centum with respect to mortgages of
20 property located in Alaska, Guam, and Hawaii”.

21 (f) Section 303 (a) of such Act is amended—

22 (1) by striking out all of the first sentence which
23 follows “directors” and inserting in lieu thereof a period:
24 and

1 (2) by striking out everything after the second
2 sentence.

3 (g) Section 303 (c) of such Act is amended—

4 (1) by striking out the “the effective date estab-
5 lished pursuant to section 808 of the Housing and Urban
6 Development Act of 1968” and inserting in lieu thereof
7 “September 1, 1968,”; and

8 (2) by striking out the proviso in the last sentence.

9 (h) Subsections (d) and (e) of section 303 of such
10 Act are repealed.

11 (i) Section 304 (a) (1) of such Act is amended by
12 striking out “section 502 of the Emergency Home Finance
13 Act of 1970” and inserting in lieu thereof “section 243 of
14 the National Housing Act”.

15 (j) Except with respect to any person receiving an
16 annuity on the date of enactment hereof, section 309 (d) (2)
17 of such Act is amended—

18 (1) by striking out “the termination of the transi-
19 tional period referred to in section 810 (b) of the Hous-
20 ing and Urban Development Act of 1968” and insert-
21 ing in lieu thereof “January 31, 1972,”; and

22 (2) by inserting “positions listed” immediately
23 before “in section 5312”.

24 (k) Subsections (b) and (c) of section 810 of the
25 Housing and Urban Development Act of 1968 are repealed.

93^D CONGRESS
1ST SESSION

S. 1348

IN THE SENATE OF THE UNITED STATES

MARCH 22, 1973

Mr. BROCK (for himself, Mr. BENNETT, Mr. HATHAWAY, Mr. SPARKMAN, and Mr. TOWER) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To provide for the establishment of safety standards for mobile homes in interstate commerce, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That Congress declares that the purpose of this Act is to
4 reduce the amount of insurance costs; property damage,
5 personal injury, and death resulting from mobile home
6 accidents without any substantial increase in the retail price
7 of a mobile home. Therefore, Congress determines that it is
8 necessary to establish practical Federal safety standards for
9 mobile homes in interstate commerce; to authorize mobile
10 home safety research and development; to encourage and

2

1 provide financial assistance for the development of State
2 mobile home safety programs; and to provide that for the
3 purposes of any Federal guarantee of a loan for the purchase
4 of a mobile home or the making or investing in any such
5 loan by a Federal savings and loan association, each such
6 mobile home shall meet such Federal safety standards.

7 TITLE I—MOBILE HOME SAFETY STANDARDS

8 SHORT TITLE

9 SEC. 101. This Act may be cited as the “National Mo-
10 bile Home Safety Standards Act of 1973”.

11 DEFINITIONS

12 SEC. 102. As used in this title, the term—

13 (1) “dealer” means any person who is engaged in
14 the sale and distribution of new mobile homes, primarily
15 to persons who in good faith purchase any such mobile
16 home for purposes other than resale;

17 (2) “defect” includes any substantial defect in the
18 performance, construction, components, or materials of
19 a mobile home;

20 (3) “distributor” means any person who is engaged
21 in the sale and distribution of mobile homes for resale;

22 (4) “interstate commerce” means commerce be-
23 tween any place within a State and any place within
24 another State, or between places within the same State
25 through another State;

3

1 (5) “manufacturer” means any person engaged in
2 manufacturing or assembling mobile homes, including
3 any person engaged in importing mobile homes for
4 resale;

5 (6) “mobile home” means a transportable structure
6 which exceeds eight body feet in width and thirty-two
7 body feet in length and is built on a chassis and designed
8 to be used as a dwelling with or without a permanent
9 foundation when connected to the required utilities;

10 (7) “mobile home safety” means the performance
11 of a mobile home in such a manner that the public
12 is protected against any unreasonable risk of the occur-
13 rence of accidents due to the design or construction of
14 such mobile home, or any unreasonable risk of death
15 or injury to the public if such accidents do occur;

16 (8) “mobile home safety standard” means a mini-
17 mum, practicable standard for mobile home performance
18 which meets the need for mobile home safety;

19 (9) “Secretary” means the Secretary of Housing
20 and Urban Development;

21 (10) “State” includes each of the several States,
22 the District of Columbia, the Commonwealth of Puerto
23 Rico, Guam, the Virgin Islands, the Canal Zone, and
24 American Samoa; and

25 (11) “United States district courts” means the

1 Federal District Courts of the United States and the
2 United States courts of the Commonwealth of Puerto
3 Rico, Guam, the Virgin Islands, the Canal Zone, and
4 American Samoa.

5 FEDERAL MOBILE HOME SAFETY STANDARDS

6 SEC. 103. (a) The Secretary shall establish by order
7 appropriate Federal mobile home safety standards. Each
8 such Federal mobile home safety standard shall be practi-
9 cable, shall meet the need for mobile home safety, and shall
10 be stated in objective terms.

11 (b) The provisions of sections 551 through 559 of
12 title 5, United States Code, shall apply to all orders estab-
13 lishing, amending, or revoking a Federal mobile home safety
14 standard under this title.

15 (c) Each order establishing a Federal mobile home
16 safety standard shall specify the date such standard is to
17 take effect, which shall not be sooner than one hundred and
18 eighty days or later than one year from the date such order
19 is issued, unless the Secretary finds, for good cause shown,
20 that an earlier or later effective date is in the public interest,
21 and publishes his reasons for such finding.

22 (d) Whenever a Federal mobile home safety standard
23 established under this title is in effect, no State or political
24 subdivision of a State shall have any authority either to
25 establish, or to continue in effect, with respect to any mobile

1 home, any safety standard applicable to the same aspect of
2 performance of such mobile home which is not identical to
3 the Federal standard.

4 (c) The Secretary may by order amend or revoke
5 any Federal mobile home safety standard established under
6 this section. Such order shall specify the date on which such
7 amendment or revocation is to take effect, which shall not
8 be sooner than one hundred and eighty days or later than
9 one year from the date the order is issued, unless the Sec-
10 retary finds, for good cause shown, that an earlier or later
11 effective date is in the public interest, and publishes his
12 reasons for such finding.

13 (f) In prescribing standards under this section, the
14 Secretary shall—

15 (1) consider relevant available mobile home safety
16 data, including the results of the research, development,
17 testing, and evaluation activities conducted pursuant to
18 this title, and those activities conducted by the Ameri-
19 can National Standards Institute Committee on Mobile
20 Homes and Recreational Vehicles and the National Fire
21 Protection Association to determine how to best protect
22 the public;

23 (2) consult with such State or interstate agencies
24 (including legislative committees) as he deems appro-
25 priate;

6

1 (3) consider whether any such proposed standard
2 is reasonable, practicable, and appropriate for the par-
3 ticular type of mobile home for which it is prescribed;

4 (4) consider whether any such standard will place
5 an undue financial burden upon manufacturers and dis-
6 tributors of mobile homes;

7 (5) consider whether any such standard will result
8 in a substantial increase in the retail price of mobile
9 homes; and

10 (6) consider the extent to which any such standard
11 will contribute to carrying out the purpose of this title.

12 (g) The Secretary shall issue initial Federal mobile
13 home safety standards upon the expiration of the one hun-
14 dred and eighty day period which begins on the date of
15 enactment of this Act. The Secretary shall issue new and
16 revised Federal mobile home safety standards under this title
17 upon the expiration of the three hundred and sixty day period
18 which begins on the date of enactment of this Act.

19 NATIONAL MOBILE HOME SAFETY ADVISORY COUNCIL

20 SEC. 104. (a) The Secretary shall establish a National
21 Mobile Home Safety Advisory Council, a majority of which
22 shall be representatives of the general public, including rep-
23 resentatives of Federal, State, and local governments, and
24 the remainder shall include members of the American Na-
25 tional Standards Institute Committee on Mobile Homes and

1 Recreational Vehicles and representatives of mobile home
2 manufacturers, dealers, financiers, and insurers.

3 (b) The Secretary shall consult with the Advisory
4 Council before establishing, amending, or revoking any
5 mobile home safety standard pursuant to the provisions of
6 this title.

7 (c) Members of the National Mobile Home Safety Ad-
8 visory Council may be compensated at a rate not to exceed
9 \$100 per diem (including traveltime) when engaged in the
10 actual duties of the Advisory Council. Such members, while
11 away from their homes or regular places of business, may
12 be allowed travel expenses, including per diem in lieu of sub-
13 sistence as authorized by section 5703 (b) of title 5, United
14 States Code, for persons in the Government service em-
15 ployed intermittently. Payments under this section shall not
16 render members of the Advisory Council employees or offi-
17 cials of the United States for any purpose.

18 JUDICIAL REVIEW OF ORDER

19 SEC. 105. (a) (1) In a case of actual controversy as
20 to the validity of any order under section 103, any person
21 who will be adversely affected by such order when it is effec-
22 tive may at any time prior to the sixtieth day after such
23 order is issued file a petition with the United States court of
24 appeals for the circuit wherein such person resides or has his
25 principal place of business, for a judicial review of such or-

1 der. A copy of the petition shall be forthwith transmitted by
2 the clerk of the court to the Secretary or other officer design-
3 nated by him for that purpose. The Secretary thereupon shall
4 file in the court the record of the proceedings on which the
5 Secretary based his order, as provided in section 2112 of title
6 28 of the United States Code.

7 (2) If the petitioner applies to the court for leave to
8 adduce additional evidence, and shows to the satisfaction
9 of the court that such additional evidence is material and
10 that there were reasonable grounds for the failure to adduce
11 such evidence in the proceeding before the Secretary, the
12 court may order such additional evidence (and evidence in
13 rebuttal thereof) to be taken before the Secretary, and to
14 be adduced upon the hearing, in such manner and upon
15 such terms and conditions as to the court may seem proper.
16 The Secretary may modify his findings as to the facts, or
17 make new findings, by reason of the additional evidence so
18 taken, and he shall file such modified or new findings, and
19 his recommendation, if any, for the modification or setting
20 aside of his original order, with the return of such additional
21 evidence.

22 (3) Upon the filing of the petition referred to in para-
23 graph (1) of this subsection, the court shall have jurisdic-
24 tion to review the order in accordance with the provisions

1 of sections 701 through 706 of title 5, United States Code,
2 and to grant appropriate relief.

3 (4) The judgment of the court affirming or setting
4 aside, in whole or in part, any such order of the Secretary
5 shall be final, subject to review by the Supreme Court of
6 the United States upon certiorari or certification as pro-
7 vided in section 1254 of title 28 of the United States Code.

8 (5) Any action instituted under this subsection shall
9 survive, notwithstanding any change in the person occupy-
10 ing the office of Secretary of any vacancy in such office.

11 (6) The remedies provided for in this subsection shall
12 be in addition to and not in substitution for any other reme-
13 dies provided by law.

14 (b) A certified copy of the transcript of the record
15 and proceedings under this section shall be furnished by
16 the Secretary to any interested party at his request and pay-
17 ment of the costs thereof, and shall be admissible in any
18 criminal, exclusion of imports, or other proceeding arising
19 under or in respect of this title, irrespective of whether pro-
20 ceedings with respect to the order have previously been
21 initiated or become final under subsection (a).

22 RESEARCH, TESTING, DEVELOPMENT, AND TRAINING

23 SEC. 106. (a) The Secretary shall conduct research,
24 testing, development, and training necessary to carry out the
25 purposes of this title, including, but not limited to—

1 (1) collecting data from any source for the purpose
2 of determining the relationship between mobile home
3 performance characteristics and (A) accidents involv-
4 ing mobile homes, and (B) the occurrence of death, or
5 personal injury resulting from such accidents;

6 (2) procuring (by negotiation or otherwise) ex-
7 perimental and other mobile homes for research and
8 testing purposes;

9 (3) selling or otherwise disposing of test mobile
10 homes and reimbursing the proceeds of such sale or dis-
11 posal into the current appropriation available for the
12 purpose of carrying out this title.

13 (b) The Secretary is authorized to conduct research,
14 testing, development, and training as authorized to be car-
15 ried out by subsection (a) of this section by making grants
16 for the conduct of such research, testing, development, and
17 training to States, interstate agencies, and nonprofit insti-
18 tutions.

19 (c) Whenever the Federal contribution for any research
20 or development activity authorized by this title encouraging
21 mobile home safety is more than minimal, the Secretary
22 shall include in any contract, grant, or other arrangement
23 for such research or development activity, provisions effec-
24 tive to insure that all information, uses, processes, patents,
25 and other developments resulting from that activity will be

1 made freely and fully available to the general public. Nothing
2 herein shall be construed to deprive the owner of any back-
3 ground patent of any right which he may have thereunder.

4 COOPERATION WITH PUBLIC AND PRIVATE AGENCIES

5 SEC. 107. The Secretary is authorized to advise, assist,
6 and cooperate with, other Federal departments and agencies,
7 and State and other interested public and private agencies,
8 including the American National Standards Institute Com-
9 mittee on Mobile Homes and Recreational Vehicles and the
10 National Fire Protection Association, in the planning and
11 development of—

- 12 (1) mobile home safety standards; and
13 (2) methods for inspecting and testing to deter-
14 mine compliance with mobile home safety standards.

15 PROHIBITED ACTS

16 SEC. 108. (a) No person shall—

- 17 (1) manufacture for sale, sell, offer for sale, or in-
18 troduce or deliver for introduction in interstate com-
19 merce, or import into the United States, any mobile
20 home manufactured on or after the date any applicable
21 Federal mobile home safety standard takes effect under
22 this title unless it is in conformity with such standard,
23 except as provided in subsection (b) of this section;

- 24 (2) fail or refuse access to or copying of records,
25 or fail to make reports or provide information, or fail

1 or refuse to permit entry or inspection, as required under
2 section 112;

3 (3) fail to issue a certificate required by section
4 114, or issue a certificate to the effect that a mobile
5 home conforms to all applicable Federal mobile home
6 safety standards, if such person in the exercise of due
7 care has reason to know that such certificate is false or
8 misleading in a material respect; or

9 (4) fail to furnish notification of any defect as re-
10 quired by section 113.

11 (b) (1) Paragraph (1) of subsection (a) shall not
12 apply to the sale, the offer for sale, or the introduction or de-
13 livery for introduction in interstate commerce of any mobile
14 home after the first purchase of it in good faith for purposes
15 other than resale. In order to assure a continuing and effec-
16 tive national mobile home safety program, it is the policy of
17 Congress to encourage the adoption of State inspection of
18 used mobile homes. Therefore, to that end the Secretary shall
19 conduct a thorough study and investigation to determine the
20 adequacy of mobile home safety standards and mobile home
21 inspection requirements and procedures applicable to used
22 mobile homes in each State, and the effect of pro-
23 grams authorized by this title upon such standards, require-
24 ments, and procedures for used mobile homes, and report to
25 Congress as soon as practicable, but not later than one year

1 after the date of enactment of this Act, the results of such
2 study, and recommendations for such additional legislation as
3 he deems necessary to carry out the purposes of this title.
4 Such report shall also include recommendations by the Sec-
5 retary relating to the problems of disposal of used mobile
6 homes. As soon as practicable after the submission of such
7 report, but no later than one year from the date of sub-
8 mission of such report, the Secretary, after consultation
9 with the Council and such interested public and private
10 agencies and groups as he deems advisable, shall establish
11 uniform Federal mobile home safety standards applicable
12 to all used mobile homes. Such standards shall be expressed
13 in terms of mobile home safety performance. The Secretary
14 is authorized to amend or revoke such standards pursuant
15 to this Act.

16 (2) Paragraph (1) of subsection (a) shall not apply
17 to any person who establishes that he did not have reason
18 to know in the exercise of due care that such mobile home
19 is not in conformity with applicable Federal mobile home
20 safety standards, or to any person who, prior to such first
21 purchase, holds a certificate issued by the manufacturer or
22 importer of such mobile home, to the effect that such mobile
23 home conforms to all applicable Federal mobile home safety
24 standards, unless such person knows that such mobile home
25 does not so conform.

1 (3) A mobile home offered for importation in violation
2 of paragraph (1) of subsection (a) shall be refused admis-
3 sion into the United States under joint regulations issued
4 by the Secretary of the Treasury and the Secretary; except
5 that the Secretary of the Treasury and the Secretary may,
6 by such regulations, provide for authorizing the importation
7 of such mobile home into the United States upon such terms
8 and conditions (including the furnishing of a bond) as may
9 appear to them appropriate to insure that any such mobile
10 home will be brought into conformity with any applicable
11 Federal mobile home safety standard prescribed under this
12 title, or will be exported or abandoned to the United States.

13 (4) The Secretary of the Treasury and the Secretary
14 may, by joint regulations, permit the temporary importation
15 of any mobile home after the first purchase of it in good
16 faith for purposes other than resale.

17 (5) Paragraph (1) of subsection (a) shall not apply
18 in the case of a mobile home intended solely for export, and
19 so labeled or tagged on the mobile home itself and on the
20 outside of the container, if any, which is exported.

21 (c) Compliance with any Federal mobile home safety
22 standard issued under this title does not exempt any person
23 from any liability under common law.

24 CIVIL PENALTY

25 SEC. 109. (a) Whoever violates any provision of sec-

1 tion 108, or any regulation issued thereunder, shall be sub-
2 ject to a civil penalty of not to exceed \$1,000 for each such
3 violation. Such violation of a provision of section 108, or
4 regulations issued thereunder, shall constitute a separate
5 violation with respect to each mobile home or with respect
6 to each failure or refusal to allow or perform an act required
7 thereby, except that the maximum civil penalty shall not
8 exceed \$400,000 for any related series of violations.

9 (b) Any such civil penalty may be compromised by
10 the Secretary. In determining the amount of such penalty,
11 or the amount agreed upon in compromise, the appropriate-
12 ness of such penalty to the size of the business of the person
13 charged and the gravity of the violation shall be considered.
14 The amount of such penalty, when finally determined, or
15 the amount agreed upon in compromise, may be deducted
16 from any sums owing by the United States to the person
17 charged.

18 JURISDICTION AND VENUE

19 SEC. 110. (a) The United States district courts shall
20 have jurisdiction, for cause shown and subject to the pro-
21 visions of rule 65 (a) and (b) of the Federal Rules of Civil
22 Procedure, to restrain violations of this title, or to restrain
23 the sale, offer for sale, or the introduction or delivery for
24 introduction, in interstate commerce, or the importation into
25 the United States, of any mobile home which is determined,

1 prior to the first purchase of such mobile home in good faith
2 for purposes other than resale, not to conform to applicable
3 Federal mobile home safety standards prescribed pursuant to
4 this title, upon petition by the appropriate United States
5 attorney or the Attorney General on behalf of the United
6 States. Whenever practicable, the Secretary shall give notice
7 to any person against whom an action for injunctive relief is
8 contemplated and afford him an opportunity to present his
9 views, and, except in the case of a knowing and willful vio-
10 lation, shall afford him reasonable opportunity to achieve
11 compliance. The failure to give such notice and afford such
12 opportunity shall not preclude the granting of appropriate
13 relief.

14 (b) In any proceeding for criminal contempt for viola-
15 tion of an injunction or restraining order issued under this
16 section, which violation also constitutes a violation of this Act,
17 trial shall be by the court or, upon demand of the accused,
18 by a jury. Such trial shall be conducted in accordance with
19 the practice and procedure applicable in the case of pro-
20 ceedings subject to the provisions of rule 42 (b) of the Fed-
21 eral Rules of Criminal Procedure.

22 (c) Actions under subsection (a) of this section and
23 section 109 (a) may be brought in the district wherein any
24 act or transaction constituting the violation occurred, or in
25 the district wherein the defendant is found or is an inhabi-

1 tant or transacts business, and process in such cases may be
2 served in any other district of which the defendant is an in-
3 habitant or wherever the defendant may be found.

4 (d) In any actions brought under subsection (a) of
5 this section and section 109 (a), subpoenas for witnesses who
6 are required to attend a United States district court may run
7 into any other district.

8 (e) It shall be the duty of every manufacturer offering
9 a mobile home for importation into the United States to des-
10 ignate in writing an agent upon whom service of all admin-
11 istrative and judicial processes, notices, orders, decisions, and
12 requirements may be made for and on behalf of such man-
13 ufacturer, and to file such designation with the Secretary,
14 which designation may from time to time be changed by like
15 writing, similarly filed. Service of all administrative and
16 judicial processes, notices, orders, decisions, and requirements
17 may be made upon such manufacturer by service upon such
18 designated agent at his office or usual place of residence with
19 like effect as if made personally upon such manufacturer,
20 and in default of such designation of such agent, service of
21 process, notice, order, requirements, or decision in any pro-
22 ceeding before the Secretary or in any judicial proceeding for
23 enforcement of this title or any standards prescribed pur-
24 suant to this title may be made by posting such process, no-

1 tice, order, requirement, or decision in the office of the
2 Secretary.

3 NONCOMPLIANCE WITH STANDARDS

4 SEC. 11. (a) If any mobile home is determined not
5 to conform to applicable Federal mobile home safety stand-
6 ards, or contains a defect which relates to mobile home
7 safety, after the sale of such mobile home by a manufac-
8 turer or a distributor to a distributor or a dealer and prior
9 to the sale of such mobile home by such distributor or
10 dealer—

11 (1) the manufacturer or distributor, as the case
12 may be, shall immediately repurchase such mobile home
13 from such distributor or dealer at the price paid by such
14 distributor or dealer, plus all transportation charges in-
15 volved and a reasonable reimbursement of not less than
16 1 per centum per month of such price paid prorated
17 from the date of receipt by certified mail of notice of
18 such nonconformance to the date of repurchase by the
19 manufacturer or distributor; or

20 (2) the manufacturer or distributor, as the case
21 may be, at his own expense, shall immediately furnish
22 the purchasing distributor or dealer the required con-
23 forming part or parts or equipment for installation by
24 the distributor or dealer on or in such mobile home, and
25 for the installation involved the manufacturer shall re-

1 imburse such distributor or dealer for the reasonable
2 value of such installation plus a reasonable reimburse-
3 ment of not less than 1 per centum per month of the
4 manufacturer's or distributor's selling price prorated
5 from the date of receipt by certified mail of notice of such
6 nonconformance to the date such vehicle is brought into
7 conformance with applicable Federal standards, so long
8 as the distributor or dealer proceeds with reasonable
9 diligence with the installation after the required part or
10 equipment is received.

11 (b) In the event that any manufacturer or distributor
12 refuses to comply with the requirements of paragraphs (1)
13 and (2) of subsection (a), then the distributor or dealer,
14 as the case may be, to whom such nonconforming mobile
15 home has been sold may bring suit against such manu-
16 facturer or distributor in any district court of the United
17 States in the district in which such manufacturer or distribu-
18 tor resides, or is found, or has an agent, without respect
19 to the amount in controversy, and shall recover the damage
20 by him sustained, as well as all court costs plus reasonable
21 attorneys' fees. Any action brought pursuant to this section
22 shall be forever barred unless commenced within three years
23 after the cause of action shall have accrued.

24 (c) The value of such installations and such reasonable
25 reimbursements as specified in subsection (a) of this section

1 shall be fixed by mutual agreement of the parties, or failing
2 such agreement, by the court pursuant to the provisions of
3 subsection (b) of this section.

4 INSPECTION OF MOBILE HOMES AND RECORDS

5 SEC. 112. (a) The Secretary is authorized to conduct
6 such inspection and investigation as may be necessary to
7 enforce Federal mobile home safety standards established
8 under this title. He shall furnish the Attorney General and,
9 when appropriate, the Secretary of the Treasury any infor-
10 mation obtained indicating noncompliance with such stand-
11 ards, for appropriate action.

12 (b) For purposes of enforcement of this title, officers
13 or employees duly designated by the Secretary, upon pre-
14 senting appropriate credentials and a written notice to the
15 owner, operator, or agent in charge, are authorized—

16 (1) to enter, at reasonable times, any factory, ware-
17 house, or establishment in which mobile homes are manu-
18 factured, or held for introduction into interstate commerce
19 or are held for sale after such introduction; and

20 (2) to inspect, at reasonable times and within rea-
21 sonable limits and in a reasonable manner, such factory,
22 warehouse, or establishment.

23 Each such inspection shall be commenced and completed with
24 reasonable promptness.

25 (c) Every manufacturer, distributor, and dealer of

1 mobile homes shall establish and maintain such records, make
2 such reports, and provide such information as the Secretary
3 may reasonably require to enable him to determine whether
4 such manufacturer, distributor, or dealer has acted or is
5 acting in compliance with this title and mobile home safety
6 standards prescribed pursuant to this title and shall, upon
7 request of an officer or employee duly designated by the
8 Secretary, permit such officer or employee to inspect appro-
9 priate books, papers, records, and documents relevant to
10 determining whether such manufacturer, distributor, or dealer
11 has acted or is acting in compliance with this title and mobile
12 home safety standards prescribed pursuant to this title.

13 (d) Every manufacturer of mobile homes shall provide
14 to the Secretary such performance data and other technical
15 data related to performance and safety as may be required
16 to carry out the purposes of this Act. The Secretary is author-
17 ized to require the manufacturer to give such notification of
18 such performance and technical data that the Secretary deter-
19 mines necessary to carry out the purposes of this Act, to—

20 (1) each prospective purchaser of a mobile home
21 before its first sale for purposes other than resale at each
22 location where any such manufacturer's mobile homes
23 are offered for sale by a person with whom such manu-
24 facturer has a contractual, proprietary, or other legal
25 relationship in a manner determined by the Secretary

1 to be appropriate, which may include, but is not limited
2 to, printed matter (A) available for retention by such
3 prospective purchaser and (B) sent by mail to such
4 prospective purchaser upon his request; and

5 (2) the first person who purchases a mobile home
6 for purposes other than resale, at the time of such pur-
7 chase, or in printed matter placed in the mobile home.

8 (c) All information reported to or otherwise obtained
9 by the Secretary or his representative pursuant to subsection
10 (b) or (c) which contains or relates to a trade secret or
11 other matter referred to in section 1905 of title 18 of the
12 United States Code, shall be considered confidential for the
13 purpose of that section, except that such information may be
14 disclosed to other officers or employees concerned with carry-
15 ing out this title or when relevant in any proceeding under
16 this title. Nothing in this section shall authorize the with-
17 holding of information by the Secretary or any officer or
18 employee under his control, from the duly authorized com-
19 mittees of the Congress.

20 NOTIFICATION OF DEFECTS

21 SEC. 113. (a) Every manufacturer of mobile homes
22 shall furnish notification of any defect in any mobile home
23 produced by such manufacturer which he determines, in good
24 faith, relates to mobile home safety, to the purchaser of such

1 mobile home, within a reasonable time after such manufac-
2 turer has discovered such defect.

3 (b) The notification required by subsection (a) shall
4 be accomplished—

5 (1) by certified mail to the first purchaser (not
6 including any dealer of such manufacturer) of the mobile
7 home containing such a defect, and to any subsequent
8 purchaser to whom has been transferred any warranty
9 on such mobile home; and

10 (2) by certified mail or other more expeditious
11 means to the dealer or dealers of such manufacturer to
12 whom such mobile home was delivered.

13 (c) The notification required by subsection (a) shall
14 contain a clear description of such defect, an evaluation of
15 the risk to mobile home safety reasonably related to such
16 defect, and a statement of the measures to be taken to repair
17 such defect.

18 (d) Every manufacturer of mobile homes, shall furnish
19 to the Secretary a true or representative copy of all notices,
20 bulletins, and other communications to the dealers of such
21 manufacturer or purchasers of mobile homes of such manu-
22 facturer regarding any defect in such mobile home sold or
23 serviced by such dealer. The Secretary shall disclose so much
24 of the information contained in such notice or other infor-
25 mation obtained under section 112.(a) to the public as he

1 deems will assist in carrying out the purposes of this title,
2 but he shall not disclose any information which contains or
3 relates to a trade secret or other matter referred to in section
4 1905 of title 18 of the United States Code, unless he deter-
5 mines that it is necessary to carry out the purposes of this
6 Act.

7 (e) If through testing, inspection, investigation, or
8 research carried out pursuant to this title, or examination of
9 reports pursuant to subsection (d) of this section, or other-
10 wise, the Secretary determines that any mobile home—

11 (1) does not comply with an applicable Federal
12 mobile home safety standard prescribed pursuant to
13 section 103; or

14 (2) contains a defect which relates to mobile home
15 safety;

16 then he shall immediately notify the manufacturer of such
17 mobile home of such defect or failure to comply. The notice
18 shall contain the findings of the Secretary and shall include
19 all information upon which the findings are based. The Sec-
20 retary shall afford such manufacturer an opportunity to pre-
21 sent his views and evidence in support thereof, to establish
22 that there is no failure of compliance or that the alleged
23 defect does not affect mobile home safety. If after such pres-
24 entation by the manufacturer the Secretary determines that
25 such mobile home does not comply with applicable Federal

1 safety standards, or contains a defect which relates to mobile
2 home safety, the Secretary shall direct the manufacturer to
3 furnish the notification specified in subsection (c) of this sec-
4 tion to the purchaser of such mobile home as provided in sub-
5 sections (a) and (b) of this section.

6 (f) Every manufacturer of mobile homes shall maintain
7 a record of the name and address of the first purchaser, other
8 than a dealer or distributor, of each mobile home produced by
9 that manufacturer. The Secretary may establish, by order,
10 procedures to be followed by manufacturers in establishing
11 and maintaining such records, including procedures to be fol-
12 lowed by distributors and dealers to assist manufacturers to
13 secure the information required by this subsection which will
14 not affect the obligation of manufacturers under this subsec-
15 tion. Such procedures shall be reasonable for the particular
16 type of mobile home for which they are prescribed.

17 CERTIFICATION OF CONFORMITY WITH SAFETY STANDARDS

18 SEC. 114. Every manufacturer or distributor of a mobile
19 home shall furnish to the distributor or dealer at the time of
20 delivery of each such mobile home by such manufacturer,
21 the certification that each such mobile home conforms to all
22 applicable Federal safety standards. Such certification shall
23 be in the form of a label or tag permanently affixed to each
24 such mobile home.

1 NATIONAL MOBILE HOME SAFETY BUREAU

2 SEC. 115. The Secretary shall carry out the provisions
3 of this title through a National Mobile Home Safety Bureau
4 (hereinafter referred to as the "Bureau"), which he shall
5 establish in the Department of Housing and Urban Devel-
6 opment. The Bureau shall be headed by an Assistant Secre-
7 tary who shall be appointed by the President, by and with
8 the advice and consent of the Senate. The Assistant Secre-
9 tary shall be a citizen of the United States, and shall be ap-
10 pointed with due regard for his fitness to discharge efficiently
11 the powers and duties delegated to him pursuant to this
12 title. The Assistant Secretary shall perform such duties as are
13 delegated to him by the Secretary.

14 EFFECT UPON ANTITRUST LAWS

15 SEC. 116. Nothing contained in this title shall be deemed
16 to exempt from the antitrust laws of the United States any
17 conduct that would otherwise be unlawful under such laws,
18 or to prohibit under the antitrust laws of the United States
19 any conduct that would be lawful under such laws.

20 USE OF RESEARCH AND TESTING FACILITIES OF PUBLIC
21 AGENCIES

22 SEC. 117. The Secretary, in exercising the authority
23 under this title, shall utilize the services, research and testing
24 facilities of public agencies to the maximum extent practicable
25 in order to avoid duplication.

1 RULES AND REGULATIONS

2 SEC. 118. The Secretary is authorized to issue, amend,
3 and revoke such rules and regulations as he deems necessary
4 to carry out this title.

5 ANNUAL REPORT TO CONGRESS

6 SEC. 119. (a) The Secretary shall prepare and submit
7 to the President for transmittal to the Congress on March 1
8 of each year a comprehensive report on the administration
9 of this title for the preceding calendar year. Such report
10 shall include but not be restricted to (1) a thorough statisti-
11 cal compilation of the accidents and injuries occurring in
12 such year; (2) a list of Federal mobile home safety stand-
13 ards prescribed or in effect in such year; (3) the degree of
14 observance of applicable Federal mobile home standards;
15 (4) a summary of all current research grants and contracts
16 together with a description of the problems to be considered
17 by such grants and contracts; (5) an analysis and evalua-
18 tion, including relevant policy recommendations, of research
19 activities completed and technological progress achieved
20 during such year; (6) a statement of enforcement actions
21 including judicial decisions, settlements, or pending litigation
22 during such year; (7) the extent to which technical infor-
23 mation was disseminated to the scientific community and
24 consumer-oriented information was made available to mobile

1 home owners; and (8) a list of all State plans in effect
2 pursuant to section 120 and an evaluation of each such plan.

3 (b) The report required by subsection (a) of this
4 section shall contain such recommendations for additional
5 legislation as the Secretary deems necessary to promote
6 cooperation among the several States in the improvement
7 of mobile home safety and to strengthen the national mobile
8 home program.

9 STATE PLANS

10 SEC. 120. (a) Nothing in this title shall prevent any
11 State agency or court from asserting jurisdiction under State
12 law over any mobile home safety issue with respect to
13 which, no standard has been established pursuant to the pro-
14 visions of section 103.

15 (b) Any State which, at any time, desires to assume
16 responsibility for development and enforcement of mobile
17 home safety standards relating to any safety issue with re-
18 spect to which a Federal standard has been established
19 under section 103, shall submit to the Secretary a State
20 plan for the development of such standards and their en-
21 forcement.

22 (c) The Secretary shall approve the plan submitted by
23 a State under subsection (b), or any modification thereof,
24 if such plan in his judgment—

25 (1) designates a State agency or agencies as the

1 agency or agencies responsible for administering the
2 plan throughout the State;

3 (2) provides for the development and enforcement
4 of mobile home safety standards which are identical to
5 the standards promulgated under section 103;

6 (3) provides for a right of entry and inspection of
7 all factories, warehouses, or establishments in such State
8 in which mobile homes are manufactured, and which is
9 at least as effective as that provided in section 112;

10 (4) contains satisfactory assurances that such agency
11 has or will have the legal authority and qualified person-
12 nel necessary for the enforcement of such standards;

13 (5) give satisfactory assurances that such State will
14 devote adequate funds to the administration and enforce-
15 ment of such standards;

16 (6) requires manufacturers, distributors, and dealers
17 in such State to make reports to the Secretary in the
18 same manner and to the same extent as if the State plan
19 were not in effect; and

20 (7) provides that the State agency will make such
21 reports to the Secretary in such form and containing
22 such information, as the Secretary shall from time to
23 time require.

24 (d) If the Secretary rejects a plan submitted under sub-
25 section (b), he shall afford the State submitting the plan

1 due notice and opportunity for a hearing before so doing.

2 (c) After the Secretary approves a State plan submitted
3 under subsection (b), he may, but shall not be required to,
4 exercise his authority under sections 106, 108, 109, 112,
5 and 113 with respect to enforcement of standards established
6 under section 103 for the period specified in the next sen-
7 tence. The Secretary may exercise the authority referred to
8 above until he determines, on the basis of actual operations
9 under the State plan, that the criteria set forth in subsection
10 (c) are being applied, but he shall not make such determi-
11 nation for at least three years after the plan's approval under
12 subsection (c). Upon making the determination referred to
13 in the preceding sentence, the provisions of sections 108,
14 109, 111, 112, and 113, and standards promulgated under
15 section 103 of this title, shall not apply with respect to any
16 mobile home safety issues covered under the plan, but the
17 Secretary may retain jurisdiction under the above provisions
18 in any proceeding commenced under section 108 or 109 be-
19 fore the date of determination.

20 (f) The Secretary shall, on the basis of reports sub-
21 mitted by the State agency and his own inspections, make a
22 continuing evaluation of the manner in which each State
23 having a plan approved under this section is carrying out
24 such plan. Whenever the Secretary finds, after affording
25 due notice and opportunity for a hearing, that in the admin-

1 istration of the State plan there is a failure to comply sub-
2 stantially with any provision of the State plan, he shall notify
3 the State agency of his withdrawal of approval of such plan.
4 Upon receipt of such notice by such State agency such plan
5 shall cease to be in effect, but the State may retain jurisdic-
6 tion in any case commenced before the withdrawal of the
7 plan in order to enforce mobile home standards under the
8 plan whenever the issues involved do not relate to the rea-
9 sons for the withdrawal of the plan.

10 (g) Each State may obtain a review of each decision of
11 the Secretary withdrawing approval of or rejecting its plan
12 by filing in the United States court of appeals for the cir-
13 cuit in which such State is located within thirty days follow-
14 ing receipt of notice of such decision, a petition to modify
15 or set aside in whole or in part the action of the Secretary.
16 A copy of such petition shall forthwith be served upon the
17 Secretary, and thereupon the Secretary shall certify and file
18 in the court the record upon which the decision complained
19 of was issued as provided in section 2112 of title 28, United
20 States Code. Unless the court finds that the Secretary's de-
21 cision in rejecting a proposed State plan or withdrawing his
22 approval of such a plan is not supported by substantial evi-
23 dence the court shall affirm the Secretary's decision. The
24 judgment of the court shall be subject to review by the
25 Supreme Court of the United States upon certiorari or cer-

1 tification as provided in section 1254 of title 28, United
2 States Code.

3 GRANTS TO THE STATES

4 SEC. 121. (a) The Secretary is authorized to make
5 grants to the States which have designated a State agency
6 under section 120 to assist them—

7 (1) in identifying their needs and responsibilities
8 in the area of mobile home safety standards; or

9 (2) in developing State plans under section 120.

10 (b) The Governor of each such State shall designate the
11 appropriate State agency for receipt of any grant made by
12 the Secretary under this section.

13 (c) Any State agency designated by the Governor of
14 the State desiring a grant under this section shall submit an
15 application therefor to the Secretary. The Secretary shall
16 review and either accept or reject such application.

17 (d) The Federal share for each State grant under sub-
18 section (a) of this section may not exceed 90 per centum
19 of the total cost of the application. In the event the Federal
20 share for all States under such subsection is not the same, the
21 differences among the States shall be established on the basis
22 of objective criteria.

23 (e) The Secretary is authorized to make grants to the
24 States to assist them in administering and enforcing pro-
25 grams for mobile home safety contained in State plans ap-

1 proved by the Secretary pursuant to section 120 of this
2 title. The Federal share for each State grant under this sub-
3 section may not exceed 50 per centum of the total cost to the
4 State of such a program. The last sentence of subsection (d)
5 shall be applicable in determining the Federal share under
6 this subsection.

7 AUTHORIZATION OF APPROPRIATIONS

8 SEC. 122. There are authorized to be appropriated
9 such sums as may be necessary to carry out the provisions
10 of this title.

11 EFFECTIVE DATE

12 SEC. 123. The provisions of this title shall take effect
13 upon the expiration of the one-hundred-eighty-day period
14 which begins on the date of the enactment of this Act.

15 TITLE II—CHANGES IN EXISTING LAW

16 HOME OWNERS' LOAN ACT OF 1933

17 SEC. 201. The third paragraph of section 5(c) of the
18 Home Owners' Loan Act of 1933 (12 U.S.C. 1464(c)) is
19 amended by striking out clause (B) and inserting in lieu
20 thereof the following:

21 “(B) any loan made for the purchase of a mobile
22 home which meets or exceeds the mobile home safety
23 standards established under the National Mobile Home
24 Safety Standards Act of 1973.”

1 NATIONAL HOUSING ACT

2 SEC. 202. The last sentence of the second paragraph of
3 section 2 (a) of the National Housing Act (12 U.S.C. 1703
4 (a)) is amended by—

5 (1) striking out “the livability and durability of
6 the mobile home and” in clause (i) ;

7 (2) striking out “and” after the semicolon at the
8 end of clause (i) ; and

9 (3) striking out the period at the end of clause
10 (ii) and adding in lieu thereof “; and (iii) require
11 that the mobile home meets or exceeds the mobile
12 home safety standards established under the National
13 Mobile Home Safety Standards Act of 1973.”

14 TITLE 38, UNITED STATES CODE

15 SEC. 203. Section 1819 of title 38, United States Code,
16 is amended by—

17 (1) striking out subsection (i) and inserting in
18 lieu thereof the following:

19 “(i) No loan for the purchase of a mobile home shall
20 be guaranteed under this section unless—

21 “(1) the mobile home meets or exceeds the mobile
22 home safety standards established under the National
23 Mobile Home Safety Standards Act of 1973; and

24 “(2) the lot, if any, meets or exceeds standards
25 prescribed by the Administrator for the planning, main-

tenance, and development of mobile home sites which are attractive residential areas and which are free from, and do not substantially contribute to, adverse scenic or environmental conditions.

For the purpose of assuring compliance with such mobile home safety standards, the Administrator shall from time to time inspect the manufacturing process of mobile homes to be sold to veterans and conduct random onsite inspections of mobile homes purchased with assistance under this chapter.”; and

(2) striking out “standards prescribed by the Administrator” in clause (1) of subsection (j) and inserting in lieu thereof “safety standards required”.

EFFECTIVE DATE

SEC. 204. The provisions of this title shall apply with respect to any loan application filed, pursuant to the provisions of the Home Owners’ Loan Act of 1933, the National Housing Act, or section 1819 of title 38, United States Code, as the case may be, after the effective date of title I of this Act.

2

1 (1) promote alternatives to institutional living ar-
2 rangements for severely handicapped adults;

3 (2) promote a more normal living experience and
4 thereby provide an opportunity for the severely handi-
5 capped adult to choose how and where to live in order
6 to reduce dependency, to maximize opportunities for vo-
7 cational evaluation, training, and placement, integration
8 into the community, and to utilize already obtained
9 rehabilitation and educational experiences;

10 (3) focus attention on housing needs which are not
11 already available;

12 (4) promote facility construction adequate for both
13 handicapped and nonhandicapped at the most feasible
14 cost;

15 (5) demonstrate models of housing and services for
16 severely handicapped adults; and

17 (6) utilize existing supportive service systems.

18 AUTHORITY

19 SEC. 3. The Secretary of Health, Education, and Wel-
20 fare (hereafter referred to as the "Secretary") is authorized
21 to make grants to eligible sponsors to carry out a demonstra-
22 tion program to provide, in an efficient and innovative man-
23 ner, housing and coordination of existing supportive services
24 for severely handicapped adults. For the purposes of this
25 Act, "severely handicapped adult" means a person, having

1 attained the age of eighteen years, whose handicap is suf-
2 ficiently severe to impair substantial gainful activity, and
3 who requires multiple services to assist in adjusting to or
4 overcoming such handicap.

5 ELIGIBILITY

6 SEC. 4. An eligible sponsor for a grant under section 3
7 is a public or private nonprofit agency or organization (other
8 than a State institution) which—

9 (1) has demonstrated a commitment to serving and
10 understanding the severely handicapped;

11 (2) is, at the time it applies for such a grant, sup-
12 porting a continuing service delivery system for severely
13 handicapped persons; and

14 (3) is a community-based agency or organization.

15 CONCLUSIONS

16 SEC. 5. (a) The Secretary shall not approve any appli-
17 cation for a grant under this Act unless he determines—

18 (1) that such application was submitted to and
19 approved by a sponsor's advisory council, which council
20 is established for the purpose of furnishing advice to a
21 sponsor with respect to the administration and design
22 of a program to be carried out under this Act, and of
23 which not less than 50 per centum of the members are
24 handicapped persons, some of whom will reside in the
25 housing to be operated by the sponsor, and for which

4

1 not less than 25 per centum of the members are pro-
2 fessionals experienced in providing services to severely
3 handicapped persons;

4 (2) that the applicant has furnished assurances that
5 its program will not serve fewer than six severely handi-
6 capped adults at a cost of not more than \$10,000 per
7 adult; and

8 (3) that the applicant has furnished such other as-
9 surances as the Secretary may by regulation require.

10 (b) In furnishing assistance under this Act, the Secre-
11 tary shall encourage the conduct of demonstrations in both
12 densely and sparsely populated areas in separate geographic
13 regions of the United States.

14 REPORTS

15 SEC. 6. The Secretary shall report to the Congress not
16 later than March 1 of each year on his activities under this
17 Act and shall submit a final report to the Congress which
18 report shall include recommendations for future legislation
19 in the area of housing for severely handicapped adults based
20 upon a comprehensive analysis and review of the projects
21 funded under this Act.

22 PLANNING AND COORDINATION

23 SEC. 7. (a) Section 701 (a) of the Housing Act of
24 1954 is amended by inserting before the last sentence the
25 following: "Planning assisted under this section shall include

5

1 a consideration of the design, construction, and location of
2 housing, transportation facilities, and other facilities and
3 services for the purpose of insuring ease of adaptability of
4 such facilities and services for occupancy or use by handi-
5 capped persons.”

6 (b) Section 4 of the Department of Housing and Urban
7 Development Act is amended by adding at the end thereof
8 the following:

9 “(d) There shall be in the Department a Special Assist-
10 ant to the Secretary, designated by the Secretary, who shall
11 be responsible for—

12 “(1) consultation and coordination with the De-
13 partment of Health, Education, and Welfare and other
14 agencies with respect to housing design and technology
15 with respect to adaptability of housing for occupancy
16 by handicapped persons; and

17 “(2) coordination and oversight within the De-
18 partment of all housing and related programs to assure
19 the maximum practicable application of design and tech-
20 nology which facilitates adaptability for occupancy or
21 use by handicapped persons.”

22 AUTHORIZATION OF APPROPRIATIONS

23 SEC. 8. There are authorized to be appropriated
24 \$1,000,000 for the fiscal year ending June 30, 1974,

6

1 \$1,500,000 for the fiscal year ending June 30, 1975, and
2 \$2,000,000 for the fiscal year ending June 30, 1976, to
3 carry out the purposes of this Act. Any sums so appropriated
4 shall remain available until expended.

93^D CONGRESS
1ST SESSION

S. 1604

IN THE SENATE OF THE UNITED STATES

APRIL 17, 1973

Mr. BROCK introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To prevent discrimination on the basis of sex in housing.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the “Fair Housing Opportunity
4 Act”.

5 SEC. 2. (a) Subsections (a), (b), (c), (d), and (e) of
6 section 804 of the Act entitled “An Act to prescribe penalties
7 for certain acts of violence or intimidation, and for other
8 purposes” approved April 11, 1968 (42 U.S.C. 3604), are
9 amended by inserting a comma and the word “sex” imme-
10 diately after the word “religion” each time it appears in such
11 subsections.

II

1 (b) Section 805 of such Act is amended by inserting
2 a comma and the word “sex” immediately after the word
3 “religion”.

4 (c) Section 806 of such Act is amended by inserting a
5 comma and the word “sex” immediately after the word
6 “religion”.

7 (d) Subsection (a), paragraph (1) of subsection (b),
8 and subsection (c) of section 901 of such Act are amended
9 by inserting a comma and the word “sex” immediately after
10 the word “religion” each time it appears.

93D CONGRESS
1ST SESSION

S. 1614

IN THE SENATE OF THE UNITED STATES

APRIL 17, 1973

Mr. PERCY introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To require the Secretary of Housing and Urban Development to furnish additional consumer protection services, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the “Home Buyer and Home
4 Owner Protection Act of 1973”.

5 SEC. 2. The Congress finds that—

6 (1) the Federal Housing Administration of the
7 Department of Housing and Urban Development admin-
8 isters programs designed to promote homeownership
9 among low- and middle-income individuals and families;

10 (2) the doctrine of caveat emptor has too often pre-

II.

2

1 vailed in the operations of the Department, particularly
2 the Federal Housing Administration;

3 (3) the hardships which many individuals and fam-
4 ilies have experienced in purchasing badly constructed,
5 unsafe, or otherwise defective homes could have been
6 prevented in numerous cases if the Federal Housing
7 Administration had effectively carried out its responsi-
8 bility; and

9 (4) many of the defaults, abandonments, and fore-
10 closures occurring in some Federal homeownership
11 programs could be prevented by a greater involvement
12 with and concern for the home purchaser in the admin-
13 istration of such programs by the Department of Hous-
14 ing and Urban Development.

15 SEC. 3. It is the purpose of this Act to accelerate the
16 movement of the Department of Housing and Urban De-
17 velopment toward an activist consumer orientation, to en-
18 courage the Secretary of Housing and Urban Development
19 to use fully the power and authority he now possesses to
20 act on behalf of the home buyer, the homeowner, the tenant,
21 and all other groups of housing consumers with which the
22 Department deals, and to provide the Department of Hous-
23 ing and Urban Development with such additional personnel
24 as may be necessary to accomplish these objectives.

25 SEC. 4. (a) Section 518 of the National Housing Act
26 is amended to read as follows:

1 "REQUIREMENTS OF SELLER'S WARRANTY; EXPENDITURES
2 TO CORRECT OR COMPENSATE FOR SUBSTANTIAL DE-
3 FECTS IN MORTGAGED HOMES

4 "SEC. 518. (a) (1) In any case where a mortgage cov-
5 ering property improved by a one- to four-family dwelling
6 is insured under any provision of this Act and the mortgage
7 is approved for such insurance prior to the beginning of
8 construction, the seller or such other person as may be re-
9 quired by the Secretary shall deliver to the mortgagor a
10 warranty that the dwelling (A) is constructed in substan-
11 tial conformity with the plans and specifications (including
12 any amendments thereof, or changes or variations therein,
13 approved in writing by the Secretary) on which the Sec-
14 retary based his valuation of the dwelling, and (B) has no
15 structural or other defects which could seriously affect the
16 use and livability of the dwelling. This warrantny shall apply
17 only with respect to those instances of substantial noncon-
18 formity or defects as to which the mortgagor has given
19 written notice to the warrantor within three years from the
20 date of conveyance of title to, or initial occupancy of, the
21 dwelling, whichever first occurs. The Secretary shall require
22 the seller or other person required to deliver a warranty to
23 furnish to the Secretary and to the mortgagor a copy of the
24 final plans and specifications of the dwelling as completed,
25 and each such copy shall be certified by the seller or other
26 person.

1 “(2) The warranty required by paragraph (1) shall be
2 in addition to, and not in derogation of, all other rights and
3 privileges which the mortgagor may have under any other
4 law or instrument. The Secretary is directed to permit copies
5 of the plans and specifications (including any amendments
6 or variations approved in writing by the Secretary) for dwell-
7 ings covered by warranties under this subsection to be made
8 available in the appropriate local offices for inspection or for
9 copying by any mortgagor or warrantor during such periods
10 of time as the Secretary deems reasonable.

11 “(b) If the owner of any property which is improved
12 by a one- to four-family dwelling covered by a mortgage
13 insured under any provision of this Act requests assistance
14 from the Secretary within five years after the insurance of
15 the mortgage, the Secretary is authorized—

16 “(1) to correct structural defects in any such prop-
17 erty or any other defects in such property which seri-
18 ously affect the use and livability of the dwelling;

19 “(2) to pay the claims of such owners arising from
20 any such defect or from any substantial nonconformity
21 with any plans and specifications (including any amend-
22 ments thereof, or changes or variations therein, approved
23 in writing by the Secretary) on which the Secretary
24 based his valuation of the dwelling; or

1 “(3) to acquire title to property in which any such
2 defect or nonconformity exists.

3 “(c) The Secretary shall, with all reasonable prompt-
4 ness, make expenditures, for any of the purposes specified in
5 subsection (b), with respect to structural or other defects
6 which seriously affect the use and livability of any single-
7 family dwelling which is covered by a mortgage insured
8 under any section of this Act and is more than one year old
9 on the date of the issuance of the insurance commitment, or
10 with respect to any substantial nonconformity with the plans
11 and specifications on which the Secretary based his valuation
12 of any such dwelling, if (A) the owner requests assistance
13 from the Secretary not later than five years after the insur-
14 ance of the mortgage, and (B) the defect or nonconformity
15 is one that existed on the date of the issuance of the insurance
16 commitment and is one that a proper inspection could reason-
17 ably be expected to disclose. The Secretary may require from
18 the seller of any dwelling an agreement to reimburse him for
19 any payments made pursuant to this subsection with respect
20 to such dwelling.

21 “(d) The Secretary shall by regulation prescribe the
22 terms and conditions upon which expenditures and payments
23 may be made under the provisions of this section. The deter-
24 minations of the Secretary regarding such expenditures or

6

1 payments, and the terms and conditions under which the
2 expenditures and payments are approved or disapproved,
3 shall be final and conclusive and shall not be subject to judi-
4 cial review.

5 “(e) The Secretary shall prescribe regulations provid-
6 ing for the annual reinspection of any dwelling during any
7 period when the dwelling is subject to a warranty under sub-
8 section (a) or the owner of the dwelling is eligible for as-
9 sistance in accordance with subsection (b).”

10 (b) In the case of a mortgage which is insured under
11 any provision of the National Housing Act more than four
12 and one-half years prior to the date of enactment of this
13 Act, the Secretary may furnish assistance under section 518
14 of the National Housing Act, as amended by subsection
15 (a), if the owner of property eligible for assistance under
16 such section 518 requests such assistance within six months
17 after the date of enactment of this Act.

18 SEC. 5. (a) Title V of the National Housing Act is
19 amended by adding at the end thereof the following new
20 sections:

21 “COUNSELING AND RELATED SERVICES FOR HOME
22 BUYERS

23 “SEC. 525. (a) The Secretary is authorized to provide,
24 in connection with the operation of the Federal Housing
25 Administration, neighborhood counseling services in areas

1 in which he determines that there is a special interest in and
2 need for federally assisted homeownership programs. Such
3 services shall be provided at readily accessible locations and
4 shall include—

5 “(1) the provision of information to prospective
6 home buyers concerning federally assisted homeowner-
7 ship programs;

8 “(2) the collection of information concerning prop-
9 erties which are available for homeownership in the
10 neighborhood, together with the names of persons
11 handling or otherwise involved in the sale of such prop-
12 erties, and the furnishing of such information to prospec-
13 tive home buyers;

14 “(3) the provision of assistance to home buyers in
15 locating and acquiring suitable properties and in dealing
16 with the various parties having an interest in such
17 properties;

18 “(4) the provision of pre- and post-purchase home-
19 ownership counseling to home buyers;

20 “(5) the handling of consumer complaints concern-
21 ing the conduct of the parties in a federally related real
22 estate transaction, structural or other defects in a dwell-
23 ing subject to a mortgage which is insured under this
24 Act or under any other Federal program designed to
25 furnish assistance or services to the homeowner;

1 “(6) the provision of such other similar or related
2 services or facilities as the Secretary determines to be
3 necessary or desirable; and

4 “(7) the provision of legal assistance to home
5 buyers at the time of closing.

6 “(b) There are authorized to be appropriated such
7 sums as may be necessary to carry out the provisions of this
8 section.

9 “OBSERVANCE OF CERTAIN STANDARDS OF CONDUCT IN THE
10 SALE OF FEDERALLY ASSISTED HOUSING

11 “SEC. 526. The Secretary shall by regulation prescribe
12 ‘fair-dealing requirements’ which must be observed by any
13 person selling real property, if (1) the property is to be
14 occupied by the purchaser or his family as a residence, and
15 (2) the sale is to be financed with assistance under this Act.
16 Such requirements shall include, but are not limited to, the
17 following:

18 “(A) The seller shall apprise the buyer of any
19 information known to him with respect to the condition
20 or previous sales history of the property which could
21 reasonably affect the buyer’s decision to purchase.

22 “(B) Any person acting as a real estate agent or
23 broker in connection with the sale of the property shall,
24 upon request, identify and show to a prospective pur-
25 chaser any other similar properties which are known to
26 him to be available in the area.

1 Any person who violates any fair-dealing requirement may,
2 in accordance with regulations prescribed by the Secretary,
3 be prohibited from participation in any program administered
4 by the Secretary for a period of not to exceed five years. The
5 Secretary shall give written notice of his intention to impose
6 such a prohibition to such person, and such person may re-
7 quest a hearing within twenty days after receipt of such
8 notice. If a hearing is requested, the Secretary shall hold the
9 hearing not later than twenty days after receipt of the re-
10 quest. Any determination of the Secretary under this section
11 shall be subject to review in accordance with section 1411
12 of the Housing and Urban Development Act of 1968.”

13 (b) The first sentence of section 512 of such Act is
14 amended by inserting after “or of any regulation issued by
15 the Secretary” under the following: “section 526 or any
16 other section of”.

17 SEC. 6. Section 101 (e) of the Housing and Urban De-
18 velopment Act of 1968 is amended by adding at the end
19 thereof the following new sentence: “The Secretary shall
20 establish the program authorized under this subsection not
21 later than one year after the enactment of the Home Buyer
22 and Home Owner Protection Act of 1973.”.

23 SEC. 7. There is hereby established in the Department
24 of Housing and Urban Development an Office of Consumer
25 Affairs (hereinafter referred to as the “Office”) which shall

1 represent and be an advocate in behalf of the interests of
2 housing consumers in proceedings within the Department.
3 The Office shall represent interest of the Secretary of Housing
4 and Urban Development in disputes under warranties
5 under section 518 (a) of the National Housing Act, and is
6 hereby authorized to act as a mediator in any such dispute.
7 It shall also be the function of the Office to develop and
8 operate or coordinate programs of the Department relating
9 to homeowner, home purchasers, tenants, home inspection
10 and repair, consumer complaints, and neighborhood counseling
11 and complaint centers. Each area and insuring office of
12 the Department shall have a representative of the Office.

13 SEC. 8. (a) Title II of the National Housing Act is
14 amended by adding at the end thereof the following new
15 section:

16 "SEC. 244. Nothing in this title may be construed to
17 prevent the Secretary from approving any privately developed
18 or promoted plan or program for the protection of
19 homeowners including maintenance and repair, counseling,
20 and protection against involuntary unemployment."

21 (b) Not later than one year following the date of enactment
22 of this Act, the Secretary of Housing and Urban
23 Development shall transmit to the Congress a report on the
24 need for and the feasibility of (1) a program to provide, by
25 insurance or otherwise, home repair assistance for low- and

11

1 moderate-income homeowners; and (2) a program whereby
2 mortgagors under mortgages insured by the Secretary pay a
3 monthly fee or premium (or part of currently charged
4 premiums for insurance) into an escrow account to be uti-
5 lized for repairs resulting from latent defects.

93d CONGRESS
1ST SESSION

S. 1743

IN THE SENATE OF THE UNITED STATES

MAY 8, 1973

Mr. SPARKMAN (for himself and Mr. Tower) (by request) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To provide Federal revenues to State and local governments and afford them broad discretion in carrying out community development activities.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Better Communities
4 Act".

5 STATEMENT OF FINDINGS AND PURPOSE

6 SEC. 2. (a) The Congress finds and declares that—
7 (1) States and units of general local government are
8 the most appropriate levels of government to develop and to
9 carry out community development programs and activities.

1 (2) Federal assistance for community development is
2 presently so excessively fragmented and controlled at the
3 Federal level, channeled through so many separate over-
4 lapping and independent grant programs, and to so many
5 different special purpose bodies and agencies that it has be-
6 come an ineffective use of the Federal funds devoted to as-
7 sistance for community development.

8 (3) The effectiveness of Federal assistance for com-
9 munity development would be improved by making Federal
10 resources allocated for such purposes available to States and
11 units of general local government to use with broad discre-
12 tion in light of their evaluation of their own community de-
13 velopment needs and the resources available to them to meet
14 those needs.

15 (b) It is therefore the purpose of this Act to help States
16 and units of general local government to deal more effec-
17 tively with the broad range of community development con-
18 cerns by replacing inflexible and fragmented categorical pro-
19 grams of Federal assistance with a simpler, more certain,
20 and more expeditious system of Federal revenue sharing
21 assistance which will encourage the exercise of State and
22 local responsibility.

23

DEFINITIONS

24

SEC. 3. (a) As used in this Act—

25

(1) the term "Secretary" means the Secretary of

26

Housing and Urban Development;

(2) the term "unit of general local government" means any city, municipality, county, town, township, parish, village, or other general purpose political subdivision of a State; a combination of such political subdivisions recognized by the Secretary; the District of Columbia; and the Trust Territory of the Pacific Islands;

(3) the term "State" means any State of the United States, the Commonwealth of Puerto Rico, Guam, Samoa, and the Virgin Islands;

(4) the term "metropolitan area" means a standard metropolitan statistical area as established by the Office of Management and Budget;

(5) the term "metropolitan city" means a city having a population of fifty thousand or more or a central city in a metropolitan area;

(6) the term "urban county" means any county which is within a metropolitan area and which has a population of two hundred thousand or more, excluding the population of metropolitan cities therein;

(7) the term "population" means total resident population based on data compiled by the United States Bureau of the Census and referable to the same point or period in time;

(8) the term "extent of poverty" means the number of persons whose incomes are below the poverty level, as determined by the Secretary pursuant to the definition

1 provided by the Office of Management and Budget, and
2 based on data referable to the same point or period in
3 time;

4 (9) the term “extent of housing overcrowding”
5 means the number of housing units with 1.01 or more
6 persons per room based on data compiled by the United
7 States Bureau of the Census and referable to the same
8 point or period in time; and

9 (10) the term “fiscal year” means that period of
10 time extending from July 1 of any calendar year through
11 June 30 of the subsequent calendar year and receiving
12 the numerical designation of the calendar year in which
13 the period ends.

14 (b) To the extent practicable, the definitions in subsec-
15 tion (a) shall be based upon the most recent data compiled
16 by the United States Bureau of the Census and the latest pub-
17 lished circulars of the Office of Management and Budget. The
18 Secretary may by regulation make technical modifications in
19 the terms defined in subsection (a) where necessary to re-
20 flect modifications in Bureau of the Census data categories
21 made subsequent to enactment of this Act.

22 COMMUNITY DEVELOPMENT ACTIVITIES ELIGIBLE FOR
23 ASSISTANCE

24 SEC. 4. Community development activities for which a
25 recipient may utilize shared Federal revenues provided under
26 this Act may include—

(1) acquisition of real property (including air rights, water rights, and other interests therein) which is (i) blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth, (ii) necessary for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open spaces, natural resources, and scenic areas, the provision of recreational opportunities, or the guidance of urban development, (iii) determined to be appropriate for rehabilitation or conservation activities, (iv) to be used for the provision of public works, facilities, and improvements eligible for assistance under this Act, or (v) for other public purposes;

(2) relocation payments and assistance for individuals, families, businesses, nonprofit organizations, and farm operations displaced by community development activities;

(3) clearance, demolition, removal, and rehabilitation of buildings and improvements (including financing rehabilitation of privately owned properties when incidental to other activities) ;

(4) acquisition, construction, reconstruction, or installation of public works, facilities, and site or other improvements—including water and sewer facilities, com-

community and neighborhood facilities, historic properties, utilities, streets, street lights, foundations and platforms for air rights sites, pedestrian malls and walkways, parks, and playgrounds;

(5) elimination, by code enforcement and other means, of harmful physical conditions constituting a danger to public health and safety;

(6) disposition (through sale, lease, donation, or otherwise) of any real property acquired pursuant to this Act or its retention for public purposes; and

(7) the provision of community services (including activities to further the purposes of section 9 (a)) which the recipient determines are necessary to achieve its community development objectives.

STATEMENTS OF COMMUNITY DEVELOPMENT ACTIVITIES

SEC. 5. (a) Prior to the first receipt in any fiscal year of funds by any State or by any unit of general local government under section 7, the recipient of such funds shall have prepared a final statement of community development objectives and projected use of funds for such fiscal year and shall have provided the Secretary with the certification required in the last sentence of this subsection. The statement shall also reflect the degree to which activities assisted under this Act relate to any State and area wide programs and activities for community development. In order to permit public ex-

1 amination and appraisal of community development projects
2 and activities proposed to be carried out with shared rev-
3 enues, to enhance the public accountability of recipients of
4 funds and to facilitate coordination of activities with different
5 levels of government, at least sixty days prior to preparation
6 of a final statement, a proposed statement shall be published
7 in such manner as to afford the citizens of such State or unit
8 of general local government a reasonable opportunity to
9 examine its content and to submit comments on the proposed
10 statement. In preparing the final statement, the recipient
11 shall consider any such comments and may, if deemed appro-
12 priate by the recipient, modify the proposed statement. The
13 final statement shall be made available to the public, and a
14 copy shall be furnished to the Secretary (and, in the case of
15 any recipient unit of general local government, to the Gover-
16 nor of the State in which it is located as well) together with
17 a certification that the recipient is in full compliance with the
18 publication requirements of this subsection as well as the
19 other provisions of the Act.

20 (b) With respect to funds to be received in fiscal year
21 1975, the requirements of subsection (a) may be met by
22 actions taken prior to the effective date of this Act.

23 (c) Within sixty days after the close of any fiscal year
24 in which the recipient receives funds under this Act, the
25 recipient shall make public and shall forward to the Secretary

1 a report concerning the community development projects or
2 activities paid for or expected to be paid for in whole or in
3 part by funds received under section 7 which were initiated
4 or carried out during the then preceding fiscal year. The
5 report shall include an assessment of such activities in rela-
6 tion to the community's development objectives.

7 AUTHORIZATION OF APPROPRIATIONS

8 SEC. 6. For the purpose of carrying out this Act there
9 are hereby authorized to be appropriated, without fiscal year
10 limitation, such sums as may be necessary for fiscal year
11 1975 and the four succeeding fiscal years.

12 ALLOCATION AND DISTRIBUTION OF FUNDS

13 SEC. 7. (a) (1) From the funds provided in any fiscal
14 year from appropriations to carry out this Act, the Secretary
15 shall pay to each metropolitan city and urban county an
16 aggregate amount equal to the greater of its formula entitle-
17 ment, as computed under paragraph (2), or its hold-harmless
18 amount, as computed under paragraph (3).

19 (2) (A) Subject to subparagraph (C), the Secretary
20 shall compute the formula entitlement of each metropolitan
21 city or urban county by allocating 65 per centum of the total
22 of the funds made available in the fiscal year from appropria-
23 tions to carry out this Act so that each metropolitan city or
24 urban county is allotted an amount which bears the same ratio
25 to such 65 per centum as the average of ratios among—

9

1 (i) the population of the city or urban county and
2 that of all metropolitan cities and urban counties;

3 (ii) the extent of poverty in the city or urban
4 county and that in all metropolitan cities and urban
5 counties; and

6 (iii) the extent of housing overcrowding in the city
7 or urban county and that in all metropolitan cities and
8 urban counties.

9 (B) In applying subparagraph (A), the ratio involving
10 the extent of poverty shall be counted twice for purposes of
11 determining the average ratio, and urban counties shall be
12 considered as if they did not include metropolitan cities. For
13 fiscal years 1975 and 1976, in computing entitlements under
14 subparagraph (A), the Secretary shall exclude from urban
15 county data the population, poverty, and housing overcrowd-
16 ing data from units of general local government which are
17 located in such counties and which qualify for hold-harmless
18 funds. For fiscal year 1977, he shall exclude two-thirds of
19 such data and for fiscal year 1978 he shall exclude one-third
20 of such data.

21 (C) During the first three years for which funds are
22 allocated under this Act, the entitlement of a metropolitan
23 city or urban county as computed under the two preceding
24 subparagraphs shall be adjusted as provided in this subpara-
25 graph if the amount so computed for the first year exceeds

1 the city's or county's hold-harmless amount as determined
2 under paragraph (3) of this subsection. Such adjustment
3 shall be made so that—

4 (i) the entitlement for the first year equals one-
5 third of the full entitlement computed under subpara-
6 graph (A), or the hold-harmless amount, whichever is
7 the greater,

8 (ii) the entitlement for the second year equals two-
9 thirds of the full entitlement computed under subpara-
10 graph (A), or the hold-harmless amount, or the amount
11 allowed under clause (i) of this subparagraph, which-
12 ever is the greatest, and

13 (iii) the entitlement for the third year equals the
14 full formula entitlement computed under subparagraph
15 (A).

16 (3) (A) The hold-harmless amount of each metropoli-
17 tan city or urban county shall be determined on the basis of
18 prior grants or other assistance the city or county has re-
19 ceived. During fiscal years 1975 and 1976, such amount shall
20 be the full amount computed for the city or county in accord-
21 ance with subparagraph (B) of this paragraph. In fiscal
22 years 1977, 1978, and 1979, if such amount is greater than
23 the formula entitlement of the metropolitan city or urban
24 county for that year, as computed under subparagraph (A)
25 of subsection (a) (2), it shall be reduced so that—

11

1 (i) in fiscal year 1977, the excess of hold-harmless
2 over the formula entitlement shall equal two-thirds of
3 the difference between the amount computed under para-
4 graph (B) and the formula entitlement for such year,

5 (ii) in fiscal year 1978, the excess of hold-harmless
6 over the formula entitlement shall equal one-third of the
7 difference between the amount computed under para-
8 graph (B) and entitlement for such year, and

9 (iii) in fiscal year 1979 there shall be no excess of
10 hold-harmless over formula entitlement.

11 (3) (B) The full hold-harmless amount of each metro-
12 politan city or urban county shall be the sum of (i) the
13 sum of the average during the five fiscal years ending prior
14 to July 1, 1972, of (1) commitments for grants pursuant
15 to part A of title I of the Housing Act of 1949; (2) loans
16 pursuant to section 312 of the Housing Act of 1964; (3)
17 grants pursuant to sections 702 and 703 of the Housing
18 and Urban Development Act of 1965; (4) loans pursuant
19 to title II of the Housing Amendments of 1955; and (5)
20 grants pursuant to title VII of the Housing Act of 1961;
21 and (ii) the average annual grant made in accordance with
22 part B of title I of the Housing Act of 1949 during fiscal
23 years ending prior to July 1, 1972, or during fiscal year
24 1973 in the case of a metropolitan city or urban county
25 which first received a grant under part B of title I in such

1 fiscal year. In the case of a metropolitan city or urban
2 county program under section 105 of title I of the Demon-
3 stration Cities and Metropolitan Development Act of 1966
4 which has been funded or extended in fiscal year 1973 for
5 a period ending after June 30, 1973, determinations of the
6 hold-harmless amount of such metropolitan city or urban
7 county shall be made so as to include, in addition to the
8 amounts specified in clauses (i) and (ii) of the preceding
9 sentence, an amount equal to the average annual grant (ex-
10 cluding grants for planned variations) made during the fiscal
11 years ending prior to July 1, 1972, in accordance with such
12 section, except that such amount shall be added annually
13 only for a number of years which, when added to the num-
14 ber of funding years for which the city or county received
15 grants under section 105 of title I of the Demonstration
16 Cities and Metropolitan Development Act of 1966, equals
17 five. For the purposes of this subparagraph the average an-
18 nual grant under part B of title I of the Housing Act of
19 1949 and section 105 of title I of the Demonstration Cities
20 and Metropolitan Development Act of 1966 shall be estab-
21 lished by dividing the total amount of grants made to a
22 participant under the program by the number of months of
23 program activity for which funds were authorized and multi-
24 plying the result by twelve.

1 (C) In making determinations under subparagraph
2 (B), of this paragraph (3), the Secretary, in the case of
3 urban counties, shall exclude grants or other assistance ex-
4 tended to metropolitan cities and other units of local govern-
5 ment within those counties. He shall also exclude from
6 determinations under subparagraph (B), grants or loans
7 made to assist in recovery from natural disasters, and grants
8 made to assist in the initial implementation of the Uni-
9 form Relocation Assistance and Real Property Acquisition
10 Policies Act.

11 (b) (1) From the funds provided in any fiscal year
12 from appropriations to carry out this Act, the Secretary shall
13 pay such hold-harmless amount if any, as may be determi-
14 nable under subsection (a) (3) to any unit of local govern-
15 ment which is not a metropolitan city or urban county, if
16 on June 30, 1974, it was carrying out a model cities pro-
17 gram under title I of the Demonstration Cities and Metro-
18 politan Development Act of 1966, or if during fiscal year
19 1968 or any subsequent fiscal years preceding the date of
20 the enactment of this Act, one or more urban renewal proj-
21 ects or neighborhood development programs were being
22 carried out by such unit of general local government pursuant
23 to commitments for grants or grants entered into or made
24 during such period of fiscal years under title I of the Housing
25 Act of 1949.

1 (2) In fiscal years 1977, 1978, and 1979, in deter-
2 mining the hold-harmless amount of units of general local
3 government qualifying under this subsection, the third sen-
4 tence of subparagraph (A) of subsection (a) (3) shall be
5 applied as though such units were metropolitan cities or
6 urban counties with entitlements of zero.

7 (c) (1) From the funds available from appropriations
8 to carry out this Act that are not paid in any fiscal year to
9 metropolitan cities, urban counties, or other units of general
10 local government (other than funds that are not paid and
11 become available for other uses in fiscal year 1977 and sub-
12 sequent fiscal years solely by virtue of the operation of the
13 third sentence of paragraph (A) of subsection (a) (3),
14 which funds shall be allotted in accordance with subsection
15 (c) of this section), the Secretary shall pay to States 90 per
16 centum of such funds in accordance with paragraph (2)
17 of this subsection. The sums paid to any State under this
18 subsection shall be available for use for community develop-
19 ment purposes in that State, subject to the provisions of
20 paragraph (3).

21 (2) (A) From the amounts allocated under paragraph
22 (1), the Secretary shall pay to each State an amount which
23 bears the same ratio to the amount available for allocation
24 to all States as the average of ratios among—

1 (i) the population of metropolitan areas in the State
2 and that in metropolitan areas in all States;

3 (ii) the extent of poverty in metropolitan areas
4 in the State and that in metropolitan areas in all States;
5 and

6 (iii) the extent of housing overcrowding in metro-
7 politan areas in the State and that in metropolitan areas
8 in all States.

9 (B) In applying subparagraph (A), the ratio involving
10 the extent of poverty shall be counted twice in determining
11 the average of ratios, and metropolitan areas shall be con-
12 sidered as though they did not include metropolitan cities.

13 (3) To receive funds under this subsection a State must
14 certify through its Governor that in the distribution or use
15 of funds there will be made available to units of general
16 local government in each metropolitan area, with no deduc-
17 tion for State administrative costs, an amount which is equal
18 to at least 50 per centum of the amount, if any, of the alloca-
19 tion to the State under paragraph (2) which is attributable
20 to inclusion of data pertaining to population, poverty, and
21 housing overcrowding in that metropolitan area. Funds not
22 used in or made available to particular metropolitan areas
23 pursuant to the preceding sentence shall be available for
24 distribution by the Governor to units of general local gov-
25 ernment in the State and may also be used, in a reasonable

1 amount, subject to regulations of the Secretary, for admin-
2 istrative expenses incurred by the State in carrying out this
3 Act.

4 (4) In the case of a metropolitan area extending to two
5 or more States, the portion of such area in each State shall
6 be deemed a metropolitan area for purposes of this subsec-
7 tion.

8 (d) The funds made available from appropriations for
9 carrying out this Act which are not provided for and used
10 pursuant to any of the preceding subsections of this section,
11 or which are allotted but not paid pursuant to subsection
12 (e) (2) of this section, shall be available to the Secretary
13 for payments to States and units of general local govern-
14 ment, subject to such terms and conditions as he may pre-
15 scribe, or for such other uses as the Secretary may determine
16 are consistent with the purposes of this Act including evalu-
17 ation, directly or by contract or otherwise, of the use of
18 shared revenues disbursed under this Act.

19 (e) Funds which become available in fiscal year 1977
20 and subsequent fiscal years by virtue of the third sentence
21 of paragraph (A) of subsection (a) (3) shall be allotted as
22 follows:

23 (1) 10 per centum of such sums shall be allotted
24 to the Secretary for use in accordance with subsection
25 (d) of this section;

1 (2) The balance of such sums shall be allotted so
2 that—

3 (A) one-third is allotted among metropolitan
4 cities and urban counties in the same manner as
5 funds are allotted under subparagraph (A) of sub-
6 section (a) (2) ;

7 (B) one-third shall be allotted among the
8 States in the same manner as funds are allotted
9 under paragraph (A) of subsection (c) (2) but
10 without regard to the exclusion for metropolitan
11 cities provided for in subparagraph (B) of such
12 subsection, and shall be available in each State for
13 distribution only in metropolitan areas, with each
14 such area being entitled to the amount of the State's
15 allotment which is attributable to inclusion of data
16 pertaining to population, poverty, and housing over-
17 crowding in that metropolitan area ;

18 (C) one-third shall be allotted among the States
19 in the same manner as funds are allotted under clause
20 (B) of this paragraph (2) and shall be available to
21 the Governors for distribution to any unit of general
22 local government and for other uses in accordance
23 with the second sentence of subsection (c) (3) .

24 (3) No amount allotted under paragraph (2) (A)
25 of this subsection shall be paid in any fiscal year to any

1 metropolitan city or urban county if such payment would
2 result in such city or county receiving an aggregate
3 amount pursuant to this subsection and subsection (a)
4 of this section which is in excess of its full hold-harmless
5 amount as computed under subparagraph (B) of sub-
6 section (a) (3), except that this limitation shall not
7 apply with respect to any city or county if the sum of
8 the amount allotted under such paragraph (2) (A) and
9 the formula entitlement as computed under subparagraph
10 (A) of subsection (a) (2) exceeds such full hold-
11 harmless amount.

12 (f) All computations and determinations by the Secre-
13 tary under this section shall be final and conclusive.

14 LOANS

15 SEC. 8. Nothing in this Act shall be deemed to prohibit
16 a unit of general local government from obtaining loans to
17 finance any community development activity, and from
18 pledging, or offering as security for a loan, any asset which
19 it otherwise has authority to pledge or offer as security.

20 NONDISCRIMINATION

21 SEC. 9. (a) No person in the United States shall on
22 the ground of race, color, national origin, or sex be excluded
23 from participation in, be denied the benefits of, or be sub-
24 jected to discrimination under any program or activity

1 funded in whole or in part with funds made available under
2 this Act.

3 (b) Whenever the Secretary determines that a recipient
4 has failed to comply with subsection (a) or an applicable
5 regulation, he shall notify the Governor of the State or, in
6 the case of a unit of general local government which has
7 not received shared revenues from the State, the chief execu-
8 tive of such unit of local government, of the noncompliance
9 and shall request the Governor or the chief executive officer
10 to secure compliance. If within a reasonable period of time,
11 not to exceed sixty days, the Governor or the chief execu-
12 tive officer fails or refuses to secure compliance, the Secre-
13 tary is authorized (1) to refer the matter to the Attorney
14 General with a recommendation that an appropriate civil
15 action be instituted; (2) to exercise the powers and func-
16 tions provided by title VI of the Civil Rights Act of 1964
17 (42 U.S.C. 2000d); (3) to exercise the powers and func-
18 tions provided for in section 15 of this Act; or (4) to take
19 such other action as may be provided by law.

20 (c) When a matter is referred to the Attorney General
21 pursuant to subsection (b), or whenever he has reason to
22 believe that a State government or unit of local government
23 is engaged in a pattern or practice in violation of the pro-
24 visions of this section, the Attorney General may bring a

1 civil action in any appropriate United States district court
2 for such relief as may be appropriate, including injunctive
3 relief.

4 LABOR STANDARDS

5 SEC. 10. All laborers and mechanics employed by con-
6 tractors or subcontractors in the performance of work on any
7 construction project financed in whole or in part with shared
8 revenue funds received under this Act shall be paid wages at
9 rates not less than those prevailing on similar construction
10 in the locality as determined by the Secretary of Labor in
11 accordance with the Davis-Bacon Act, as amended (40
12 U.S.C. 276a—276a-5). This section shall apply to the con-
13 struction of residential property only if such residential prop-
14 erty is designed for residential use for twelve or more families.
15 The Secretary of Labor shall have, with respect to such labor
16 standards, the authority and functions set forth in Reorgani-
17 zation Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat.
18 1267) and section 2 of the Act of June 13, 1934, as amended
19 (48 Stat. 948; 40 U.S.C. 276 (c)).

20 MATCHING GRANTS

21 SEC. 11. (a) Funds provided under this Act may be
22 used by a recipient as its non-Federal share under any Fed-
23 eral program providing assistance for community develop-
24 ment activities.

1 (b) Neither the Secretary nor any State shall require
2 any matching or other expenditure of State or local funds
3 as a condition to assistance under this Act.

4 USE OF SHARED REVENUE TO CLOSE OUT URBAN RENEWAL
5 PROJECTS

6 SEC. 12. The Secretary is authorized, notwithstanding
7 any other provision of title I of the Housing Act of 1949, or
8 of this Act, to terminate any urban renewal project being
9 carried out under such title as soon as practicable after con-
10 sultation with the agency carrying out the project and the
11 chief executive of the locality in which it is located, and to
12 effect a financial closeout as if the project had been fully
13 completed on the termination date. Any funds available to
14 such project at the time of closeout will continue to be avail-
15 able to the unit of general local government for the area in
16 which the project is located for use in meeting its statement
17 of community development objectives and projected use of
18 funds. Such closeout shall be based upon the costs incurred
19 and capital grants earned for the project to the date of
20 termination. If such closeout does not result in full repayment
21 of the principal of, and accrued interest on, any temporary
22 loans made under title I for the project, the Secretary is
23 authorized, notwithstanding any other provision of this Act,
24 to condition distribution of funds pursuant to section 7 of this
25 Act to the unit of general local government for the area in

1 which the project is located, upon the use of such funds, in
2 such amounts, and staged over such time periods as the
3 Secretary deems appropriate, to repay such temporary loans.

4 RECORDS, AUDIT, AND REPORTS

5 SEC. 13. In order to assure that revenues shared under
6 this Act are used in accordance with its provisions, each
7 recipient shall—

8 (1) use such fiscal, audit, and accounting procedures
9 as may be necessary to assure (A) proper accounting
10 for payments received by it, and (B) proper disburse-
11 ment of such payments;

12 (2) provide to the Secretary and the Comptroller
13 General of the United States access to, and the right to
14 examine, any books, documents, papers, or records as
15 he requires; and

16 (3) make such reports to the Secretary or the
17 Comptroller General of the United States as he requires.

18 RELOCATION

19 SEC. 14. (a) Section 217 of the Uniform Relocation
20 Assistance and Real Property Acquisitions Policies Act of
21 1970 (42 U.S.C. 4601) is amended by—

22 (1) striking out “or” after “Housing Act of 1949,
23 as amended”; and

24 (2) adding “or as a direct result of any community
25 development activities, 25 per centum or more of the cost

1 of which is paid for with shared revenue funds received
2 under the Better Communities Act” after “Demonstra-
3 tion Cities and Metropolitan Development Act of 1966”.

4 (b) Notwithstanding section 211 of the Uniform Relo-
5 cation Assistance and Real Property Acquisitions Policies
6 Act of 1970 (42 U.S.C. 4601) or any other provision of
7 law, no Federal contribution in addition to shared revenue
8 funds under this title shall be made to recipients for costs
9 incurred in providing relocation payments and assistance for
10 those displaced by community development activities assisted
11 under this Act.

12 REMEDIES FOR NONCOMPLIANCE

13 SEC. 15. (a) If the Secretary, after reasonable notice
14 and opportunity for hearing, finds that a recipient of revenues
15 shared under this Act has failed to comply substantially with
16 any provision of this Act, the Secretary, until he is satisfied
17 that there is no longer any such failure to comply, shall—

18 (1) terminate payments to such State under this
19 Act, or

20 (2) reduce payments under this Act by an amount
21 equal to the amount of such payments which were not
22 expended in accordance with this Act, or

23 (3) limit the availability of payments under this
24 Act to programs, projects, or activities not affected by
25 such failure to comply.

1 (b) (1) In lieu of, or in addition to, any action au-
2 thorized by subsection (a), the Secretary may, if he has rea-
3 son to believe that a recipient has failed to comply sub-
4 stantially with any provision of this Act, refer the matter
5 to the Attorney General of the United States with a rec-
6 ommendation that an appropriate civil action be instituted.

7 (2) Upon such a referral the Attorney General may
8 bring a civil action in any United States district court hav-
9 ing venue thereof for such relief as may be appropriate,
10 including an action to recover revenues shared under this
11 Act which were not expended in accordance with it, or for
12 mandatory or injunctive relief.

13 (c) (1) Any recipient which receives notice, under
14 subsection (a), of the termination, reduction, or limitation of
15 revenues shared may, within sixty days after receiving such
16 notice, file with the United States court of appeals for the
17 circuit in which such State is located, or in the United
18 States Court of Appeals for the District of Columbia, a
19 petition for review of the Secretary's action. The petitioner
20 shall forthwith transmit copies of the petition to the Sec-
21 retary and the Attorney General of the United States, who
22 shall represent the Secretary in the litigation.

23 (2) The Secretary shall file in the court the record of
24 the proceeding on which he based his action, as provided in

1 section 2112 of title 28, United States Code. No objection
2 to the action of the Secretary shall be considered by the
3 court unless such objection has been urged before the Secre-
4 tary.

5 (3) The court shall have jurisdiction to affirm or modify
6 the action of the Secretary or to set it aside in whole or in
7 part. The findings of fact by the Secretary, if supported by
8 substantial evidence on the record considered as a whole,
9 shall be conclusive. The court may order additional evidence
10 to be taken by the Secretary, and to be made part of the
11 record. The Secretary may modify his findings of fact, or
12 make new findings, by reason of the new evidence so taken
13 and filed with the court, and he shall also file such modified
14 or new findings, which findings with respect to questions of
15 fact shall be conclusive if supported by substantial evidence
16 on the record considered as a whole, and shall also file his
17 recommendations, if any, for the modification or setting aside
18 of his original action.

19 (4) Upon the filing of the record with the court, the
20 jurisdiction of the court shall be exclusive and its judgment
21 shall be final, except that such judgment shall be subject
22 to review by the Supreme Court of the United States upon
23 writ of certiorari or certification as provided in section 1254
24 of title 28, United States Code.

GENERAL PROVISIONS

2 SEC. 16. (a) The Secretary shall prescribe such rules,
3 regulations, and standards as may be necessary to carry out
4 the purposes and conditions of this Act.

(b) The Secretary shall include an evaluation of the effectiveness of this Act in his annual report to the President on departmental activities required by section 8 of the Department of Housing and Urban Development Act.

9 (c) Each recipient shall provide for the expenditure
10 of amounts received under this Act only in accordance with
11 the laws and procedures applicable to the expenditures of
12 its own revenues.

CONFORMING AND TECHNICAL AMENDMENTS

SEC. 17. (a) This Act shall be effective upon enactment
but no funds shall be allocated under section 7 for any year
prior to fiscal year 1975.

(b) Except with respect to projects and programs for which funds have been previously committed, no new grants or loans shall be made under (1) section 312 of the Housing Act of 1964, (2) section 702 or section 703 of the Housing and Urban Development Act of 1965, (3) loans pursuant to title II of the Housing Amendments of 1955, (4) title VII of the Housing Act of 1961, or (5) title I of the Demonstration Cities and Metropolitan Development Act of 1966. After June 30, 1974, no new grants or loans shall be made

1 under title I of the Housing Act of 1949 except with respect
2 to projects or programs for which funds have been committed
3 on or before such date.

4 (c) Section 3689 of the Revised Statutes, as amended
5 (31 U.S.C. 711) is amended by adding at the end thereof a
6 new paragraph as follows:

7 “(22) For payments required from time to time under
8 contracts entered into pursuant to section 103 (b) of the
9 Housing Act of 1949, as amended, with respect to projects or
10 programs for which funds have been committed on or before
11 June 30, 1974, and for which funds have not previously
12 been appropriated.”

13 (d) The Secretary is authorized to transfer the assets and
14 liabilities of any superseded or nonactive program of housing
15 or urban development to the revolving fund for liquidating
16 programs established pursuant to title II of the Independent
17 Offices Appropriation Act of 1955 (Public Law 81-428; 68
18 Stat. 272, 295).

S. 1744

MAY 8, 1973

Mr. SPARKMAN introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

To provide Federal assistance to local governments in support of community development activities.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SHORT TITLE

SECTION 1. This Act may be cited as the “Community
Development Assistance Act of 1973”.

6 FINDINGS AND PURPOSE

7 SEC. 2. (a) (1) The Congress finds and declares that
8 the Nation's cities, towns, and smaller urban communities
9 face critical social, economic, and environmental problems
10 arising from, in significant measure—

11 (A) the growth of population in metropolitan and

2

1 other urban areas, and the concentration of persons of
2 lower income in central cities; and

3 (B) inadequate public and private investment and
4 reinvestment in housing and other physical facilities, and
5 related public and social services, resulting in the growth
6 and persistence of urban slums and blight, and the marked
7 deterioration of the quality of the urban environment.

8 (2) The Congress further finds and declares that the
9 future welfare of the Nation and the well-being of its citizens
10 depend on the establishment and maintenance of viable urban
11 communities as social, economic, and political entities, and
12 requires—

13 (A) systematic and sustained action by local gov-
14 ernments to eliminate blight, to conserve and renew older
15 urban areas, and to develop new centers of population
16 growth and economic activity;

17 (B) substantial expansion of the scope and level of
18 Federal assistance and increased continuity of programs
19 in support of community development activities; and

20 (C) continuing effort at all levels of government to
21 streamline program procedures and improve the func-
22 tioning of agencies responsible for planning, implement-
23 ing, and evaluating community development efforts.

24 (b) The purpose of this Act is to meet the require-
25 ments referred to in subsection (a) by improving the present

3

1 system of Federal assistance for community development.

2 Improvement is to be accomplished chiefly through—

3 (1) simplifying and consolidating various existing
4 categorical programs, replacing them with a single, more
5 comprehensive community development assistance pro-
6 gram; and

7 (2) authorizing a new financial assistance program
8 which is intended to assure greater continuity of Federal
9 support and to increase public and private investment in
10 community development.

11 The improved program of Federal assistance provided in
12 this Act is designed to support community development
13 activities which are directed toward—

14 (A) conserving and expanding the Nation's hous-
15 ing stock in order to provide a decent home and a suitable
16 living environment for every American;

17 (B) eliminating slums and preventing the deteriora-
18 tion of property and facilities which significantly affect
19 the general welfare of the community;

20 (C) achieving more rational utilization of land and
21 other natural resources, and the better arrangement of
22 residential, commercial, industrial, recreational, and
23 other needed activity centers;

24 (D) expanding and improving the quantity and
25 quality of community services which are essential for

1 sound community development and for the development
2 of viable urban communities;

3 (E) restoring and preserving urban properties of
4 special value for historic, architectural, or esthetic rea-
5 sons; and

6 (F) eliminating conditions which are detrimental
7 to health, safety, and public welfare, through code en-
8 forcement, demolition, interim rehabilitation assistance,
9 and related activities.

10 DEFINITIONS

11 SEC. 3. As used in this Act—

12 (1) The term “Secretary” means the Secretary of
13 Housing and Urban Development.

14 (2) The term “community development agency”
15 means any State or unit of general local government.

16 (3) The term “State” means any State of the
17 United States; the Commonwealth of Puerto Rico; the
18 Trust Territory of the Pacific Islands; the territories and
19 possessions of the United States; and Indian tribes,
20 bands, groups, and nations, including Alaska Indians,
21 Aleuts, and Eskimos, of the United States.

22 (4) The term “unit of general local government”
23 means any city, municipality, county, town, township,
24 parish, village, or other general purpose political sub-
25 division of a State; a consortium of such political sub-

1 divisions recognized by the Secretary; and the District
2 of Columbia. One or more public agencies, including
3 existing local public agencies, may be designated by a
4 unit of general local government to undertake the com-
5 munity development program in whole or in part.

6 standard metropolitan statistical areas, as established by

7 (5) The term "metropolitan areas" means the
8 standard metropolitan statistical areas, as established by
9 the Office of Management and Budget.

10 (6) The term "metropolitan city" means a city
11 within a metropolitan area which is the central city of
12 such metropolitan area, as defined by the Office of
13 Management and Budget, or which is a city having a
14 population of fifty thousand or more.

15 (7) The term "population" means the total resident
16 population based on data compiled by the Bureau of the
17 Census and referable to the same point or period in time.

18 (8) The term "extent of poverty" means the num-
19 ber of persons (or alternatively, the number of families
20 and unrelated individuals) whose incomes are below the
21 poverty level, as determined pursuant to criteria pro-
22 vided by the Office of Management and Budget, and
23 based on data referable to the same point or period in
24 time.

25 (9) The term "extent of housing overcrowding"

6

1 means the number of housing units with 1.01 or more
2 persons per room based on data compiled by the Bureau
3 of the Census and referable to the same point or period
4 in time.

5 (10) The term "extent of program experience"
6 means the sum of the average, during the five fiscal years
7 preceding the date of enactment of this chapter, of (A)
8 loans pursuant to title II of the Housing Amendments of
9 1955, (B) grants pursuant to title VII of the Housing
10 Act of 1961, (C) advances pursuant to section 702 of
11 the Housing Act of 1954, (D) grants pursuant to title
12 VII of the Housing and Urban Development Act of
13 1965, and (E) grants pursuant to title I of the Housing
14 Act of 1949.

15 COMMUNITY DEVELOPMENT ACTIVITIES ELIGIBLE FOR
16 ASSISTANCE

17 SEC. 4. Community development activities assisted under
18 this Act shall further the purposes set forth in section 2 and
19 may include—

20 (1) acquisition in whole or in part by purchase,
21 lease, donation, or otherwise, of real property (including
22 air rights, and other interests therein) which is necessary
23 to achieve the objectives set forth in the community de-
24 velopment program and is (1) blighted, deteriorated,
25 deteriorating, undeveloped, or inappropriately developed

1 from the standpoint of sound community development
2 and growth, (ii) determined to be appropriate for re-
3 habilitation or conservation activities, (iii) necessary
4 for the preservation or restoration of historic sites, the
5 beautification of urban land, the conservation of open
6 spaces, natural resources and scenic areas, the provision
7 of recreational opportunities, or the guidance of urban
8 development, (iv) to be used for the provision of public
9 works, facilities, and improvements eligible for assistance
10 under this Act, or (v) to be used for other public
11 purposes, including the conversion of land to other uses
12 where necessary or appropriate to a community develop-
13 ment program;

14 (2) disposition (through sale, lease, donation, or
15 otherwise) at its fair value for uses in accordance with
16 the community development program of any real prop-
17 erty in whole or in part acquired pursuant to this
18 Act, or its retention for public purposes;

19 (3) clearance, demolition, and removal of build-
20 ings and improvements in whole or in part;

21 (4) acquisition, construction, reconstruction, or in-
22 stallation of, community facilities and site or other im-
23 provements necessary to achieve the objectives of the
24 community development program, including water and
25 sewer facilities, neighborhood facilities, fire-protection

1 services and facilities, historic properties and beautifica-
2 tion areas, streets, utilities, street lights, foundations and
3 platforms for air right sites, pedestrian malls and walk-
4 ways, parks, playgrounds and recreation facilities, and
5 other similar and necessary improvements required for
6 the execution of a community development program;

7 (5) designing and providing interim financing for
8 the construction of public facilities, other than facilities
9 encompassed within the provisions of paragraph (4),
10 which are necessary or appropriate to a community de-
11 velopment program;

12 (6) relocation payments and assistance for individ-
13 uals, families, businesses, nonprofit organization, and
14 farm operations displaced or temporarily dislocated by
15 community development activities;

16 (7) conservation and rehabilitation of existing
17 properties and facilities through code enforcement, in-
18 terim assistance, or other programs of rehabilitation; or
19 the elimination of slums and harmful physical conditions
20 which constitute a danger to public health and safety
21 through demolition or other activities;

22 (8) development or redevelopment of surplus real
23 property within the meaning of the Federal Property
24 and Administrative Services Act of 1949 acquired pur-

1 suant to section 414 of the Housing and Urban Devel-
2 opment Act of 1969, or otherwise;

3 (9) provision of technical or financial assistance to
4 persons or organizations providing necessary or appro-
5 priate services, including advisory services, to the
6 planning and execution of a community development
7 program;

8 (10) provision, where necessary or appropriate to
9 the execution of a community development program, of
10 grants or loans for the rehabilitation and conservation of
11 properties;

12 (11) provision of necessary or appropriate addi-
13 tional public services when not otherwise available which
14 are directed toward (i) improving the community's
15 public services and facilities, including those concerned
16 with the employment, health, drug abuse, education,
17 welfare, or recreation needs of persons residing in areas
18 in which community development activities are being
19 carried out, and (ii) coordinating public and private
20 development programs;

21 (12) payment of administrative costs and carrying
22 charges related to the planning, execution, and evalua-
23 tion of community development programs;

24 (13) payment of financial incentives (not to ex-

1 ceed 15 per centum of the total Federal contribution
2 to the cost of the facilities involved) to encourage the
3 timely construction of public facilities, such as schools
4 and libraries, which are not otherwise eligible and are
5 required for the execution of a community development
6 program;

7 (14) carrying out unspecified local-option activi-
8 ties, necessary or appropriate to the conduct of a com-
9 munity development program, in an amount not to
10 exceed 10 per centum of the total annual grant author-
11 ized for a locality under this Act; and

12 (15) payment of the Federal share of the cost of
13 completing a project funded under title I of the Housing
14 Act of 1949.

15 **AUTHORIZATIONS**

16 **SEC. 5. (a)** To finance grants under this Act, the
17 Secretary is authorized to incur obligations on behalf of the
18 United States in the form of grant agreements or otherwise
19 in amounts aggregating such sum not exceeding \$5,900,000,-
20 000 as is approved in an appropriation Act. The amount so
21 approved shall become available for obligation on July 1,
22 1974, and shall remain available until obligated. There are
23 authorized to be appropriated for liquidation of the obligation
24 incurred under this section not to exceed \$2,700,000,000
25 prior to July 1, 1975, which amount may be increased to

11

1 not to exceed an aggregate of \$5,900,000,000 prior to July 1,
2 1976. Sums so appropriated shall remain available until
3 expended.

4 (b) The Secretary shall report annually to the Con-
5 gress with respect to outstanding grants or other contractual
6 agreements executed pursuant to subsection (a). To assure
7 program continuity and orderly planning, the Secretary shall
8 submit to the Congress timely requests for increased authori-
9 zations for the fiscal years commencing after June 30, 1976,
10 and concurrently with those authorization requests he shall
11 submit his recommendations for any necessary adjustments
12 in the schedule for liquidation of obligations.

13 **ALLOCATION OF FUNDS; BASIC GRANT ENTITLEMENT;**

14 **REPORT**

15 **SEC. 6.** (a) Of the amount approved in an appro-
16 priation Act pursuant to section 5 and available for obliga-
17 tion, 75 per centum shall be allocated by the Secretary to
18 metropolitan areas. Except as provided in subsection (d),
19 each metropolitan city shall be eligible for annual grants
20 in an aggregate amount at least equal to the greater of its
21 basic grant entitlement amount computed pursuant to sub-
22 section (b), or its hold-harmless amount computed pursuant
23 to subsection (c).

24 (b) (1) The Secretary shall allocate for each metro-
25 politan area an amount which bears the same ratio to the al-

12

1 location for all metropolitan areas as the average of the
2 ratios between—

3 (A) the population of the metropolitan area and
4 that of all metropolitan areas;

5 (B) the extent of poverty in the metropolitan area
6 and that in all metropolitan areas;

7 (C) the extent of housing overcrowding in the
8 metropolitan area and that in all metropolitan areas; and

9 (D) the extent of program experience in the metro-
10 politan area and that in all metropolitan areas.

11 (2) From the amount allocated to each metropolitan
12 area, the Secretary shall determine for each metropolitan city
13 therein a basic grant entitlement amount for that city which
14 shall equal an amount which bears the same ratio to the
15 allocation for the metropolitan area as the average of the
16 ratios between—

17 (A) the population of the metropolitan city and
18 that of the metropolitan area;

19 (B) the extent of poverty in the metropolitan city
20 and that in the metropolitan area;

21 (C) the extent of housing overcrowding in the
22 metropolitan city and that in the metropolitan area;
23 and

24 (D) the extent of program experience in the metro-
25 politan city and that in the metropolitan area.

1 (3) In determining the average of ratios under para-
2 graph (1) or paragraph (2), the ratio involving the extent
3 of poverty shall be counted twice.

4 (c) The Secretary shall determine the hold-harmless
5 amount for each metropolitan city, which shall be an amount
6 equal to the sum of (1) the sum of the average, during
7 the five fiscal years preceding the date of enactment of
8 this Act, of (A) loans pursuant to title II of the Housing
9 Amendments of 1955, (B) grants pursuant to title VII of
10 the Housing Act of 1961, (C) advances pursuant to section
11 702 of the Housing Act of 1954, (D) grants pursuant to title
12 VII of the Housing and Urban Development Act of 1965
13 and (E) grants pursuant to part A of title I of the Housing
14 Act of 1949; and (2) the average annual grant made in
15 accordance with part B of title I of the Housing Act of 1949.

16 (d) Whenever the Secretary determines that a metro-
17 politan city would have except for the provisions of this
18 subsection a basic grant entitlement for the first year in an
19 amount exceeding 135 per centum of the city's hold-harmless
20 amount, as determined under subsection (c), he shall adjust
21 the amount of such basic grant entitlement over a period not
22 exceeding three years, so that the city's basic grant entitle-
23 ment will be increased, by such steps as the Secretary deter-
24 mines to be equitable and feasible, from the hold-harmless

1 amount up to the full basic grant entitlement of the city.
2 Any amounts not used by virtue of the operation of the pre-
3 ceding sentence shall be available for use by the Secretary
4 pursuant to subsection (g) (3).

5 (e) The remainder of the allocation for each metro-
6 politan area shall be allocated by the Secretary to commu-
7 nity development agencies within that metropolitan area,
8 taking into consideration such factors as population, extent
9 of poverty, extent of overcrowding, extent of program experi-
10 ence, and other social and fiscal conditions prevailing in the
11 metropolitan area. Any portion of the remainder of the allo-
12 cation for each metropolitan area unused at the end of the
13 fiscal year for which it was allocated shall be available for
14 use within metropolitan areas.

15 (f) Any unit of general local government which is not
16 a metropolitan city shall be eligible for annual grants in an
17 aggregate amount at least equal to the hold-harmless amount
18 for that locality as computed under the provisions of subsec-
19 tion (c), if, during the five years preceding the date of
20 enactment of this Act, one or more urban renewal projects
21 or neighborhood development programs were being carried
22 out in such locality and assisted (or with respect to which
23 commitments for assistance have been entered into) under
24 title I of the Housing Act of 1949.

25 (g) Amounts which are not allocated under subsec-

tion (a), or which are allocated but rejected by the recipient or disapproved by the Secretary under section 7, shall be allocated by the Secretary in aid of community development activities to be undertaken by community development agencies in—

(1) localities outside metropolitan areas where such use of funds is necessary to comply with subsection (f);

(2) other localities outside metropolitan areas; and

(3) localities within metropolitan areas where such use of funds is necessary to comply with subsection (a) or (f).

(h) If at the time the Secretary computes the amount of any allocation or the amount of any annual grants to which a community development agency is entitled under this Act, the full amount of funds authorized to be appropriated are not available for obligation as prescribed in section 5(a), the Secretary may (notwithstanding any other provision of this Act) make such adjustment in that computation as he deems desirable to maintain a distribution of funds consistent with the objectives of this Act.

(i) Not later than September 1, 1975, the Secretary shall make a report to the Congress setting forth such recommendations as he deems advisable, in furtherance of the purposes and policy of this Act, for modifying or expanding the provisions of this Act relating to the method

1 and level of funding and the allocation of funds, and the
2 determination of the basic grant entitlement, and for the
3 application of such provisions in the future distribution of
4 funds under this Act.

5 GENERAL REQUIREMENTS APPLICABLE TO THE GRANTING
6 OF FINANCIAL ASSISTANCE

7 SEC. 7. (a) Financial assistance shall be granted under
8 this Act only upon the basis of an annual application by
9 a community development agency. Each application shall
10 contain the following:

11 (1) An outline of community development needs
12 and objectives, and the actions to be taken during the
13 next three-year period—

14 (A) to meet the housing needs and needs
15 arising from the installation or relocation of Gov-
16 ernment facilities, including replacement and re-
17 location needs, of families who may reasonably be
18 expected to seek housing in the community, par-
19 ticularly those families with low or moderate
20 income;

21 (B) to prevent and eliminate slums and blight,
22 and upgrade neighborhood environments through
23 renewal, code enforcement, and other community
24 improvement programs; and

25 (C) to improve and upgrade community serv-

17

1 ices and facilities to meet the social needs of resi-
2 dents in areas affected by community development
3 activities.

4 (2) A description of the activities to be under-
5 taken over the next two-year period which are de-
6 signed to meet community development objectives and
7 their estimated costs, the general location of these ac-
8 tivities, and any requirements for federally assisted
9 housing units and rehabilitation loans.

10 (3) A certification that the applicant—

11 (A) has determined that activities to be car-
12 ried out under the community development pro-
13 gram are consistent with local and areawide com-
14 prehensive development plans and national growth
15 policies;

16 (B) has afforded or will afford an adequate
17 opportunity for public hearings prior to any acquisi-
18 tion of private land included in the proposed de-
19 velopment activities pursuant to reasonable prior
20 notice; and

21 (C) has afforded adequate opportunity for citi-
22 zen participation in the development of the annual
23 application and has provided for the meaningful
24 involvement of the residents of areas in which
25 community development activities are to be con-

1 centrated in the planning and execution of these
2 activities, including the provision of adequate in-
3 formation and resources.

4 (4) A report concerning the community develop-
5 ment activities which were carried out during the previ-
6 ous calendar year and their costs, including an assess-
7 ment of such activities in relation to the community's
8 development objectives.

9 (b) The Secretary may waive all or part of the require-
10 ments contained in subsection (a), if (1) the application
11 for assistance is in behalf of a locality having a population of
12 less than 25,000 according to the most recent data compiled
13 by the Bureau of the Census which is located either (i) out-
14 side a standard metropolitan statistical area, or (ii) inside
15 such an area but outside an "urbanized area" as defined by
16 the Bureau of the Census (or as such definition is modified
17 by the Secretary for purposes of this Act), (2) the applica-
18 tion relates to the first community development activity to be
19 carried out by such locality with assistance under this Act,
20 (3) the assistance requested is for a single development
21 activity under this Act of a type eligible for assistance
22 under the provisions of law referred to in clauses (1)
23 through (4) of section 15(b), and (4) the Secretary
24 determines that, having regard to the nature of the activity

19

1 to be carried out, such waiver is not inconsistent with the
2 purposes of this Act.

3 (c) (1) The Secretary shall make his determination
4 with respect to any application and give written notice of
5 his approval or disapproval within ninety days after sub-
6 mission of the application. Each application providing for
7 continuation or revision of an on-going community develop-
8 ment program shall be deemed approved by the Secretary
9 within ninety days after submission, unless the Secretary
10 notifies the applicant in writing of his disapproval of the
11 application, or any part thereof, setting forth the reasons
12 therefor with respect to performance by the community
13 development agency or the eligibility of proposed activities.

14 (2) Except as otherwise specifically provided, no ap-
15 plication for financial assistance under this Act shall be
16 approved by the Secretary unless he has concluded that the
17 community has (A) set forth a meaningful program to
18 meet its urgent development needs and to achieve the pur-
19 poses of this Act, and (B) carried out its contractual
20 commitments pursuant to any previous applications.

21 (3) Upon approval of any application, the Secretary
22 shall reserve funds, to the extent he deems it to be necessary
23 and feasible, to meet the housing requirements specified in
24 the application.

GRANTS

1
2 SEC. 8. (a) The Secretary is authorized to make grants
3 to assist community development agencies in carrying
4 out community development activities. Such grants shall be
5 made pursuant to contracts providing for payments with
6 respect to activities to be carried out over a period
7 of two years. Except as otherwise herein provided, the
8 amount of any such grant to any such agency shall not ex-
9 ceed 90 per centum of the total net program cost as deter-
10 mined by the Secretary. In any case where the execution
11 of a community development program involves the making
12 of rehabilitation grants or relocation payments, any grant
13 made to any such agency may be increased, notwithstanding
14 any other provision of law but subject to the limitations
15 prescribed in section 6, to include the full costs of
16 making such rehabilitation grants and, in the case of
17 relocation payments, the full costs of making such pay-
18 ments but not to exceed \$25,000 for any displaced person
19 as such term is defined in section 101 (6) of the Uniform
20 Relocation Assistance and Real Property Acquisition Policies
21 Act of 1970. The Secretary shall require that any part of
22 the total net program cost which is to be provided by local
23 or other non-Federal sources shall consist of cash grants,
24 the cash value of donated property, or public improvements
25 or services at their costs, contributed by such sources in

1 furtherance and as part of the community development
2 program for which Federal assistance is made available
3 under this Act.

4 (b) In determining the total cost of carrying out any
5 community development activity there shall be excluded that
6 part of such cost as is payable under any other Federal grant
7 program.

8 (c) As used in subsection (a), the term "rehabilita-
9 tion grant" means a grant not exceeding \$4,000 made to a
10 low-income individual or family who owns and occupies
11 real property and only for the purpose of covering the cost
12 of repairs and improvements necessary to make such real
13 property conform to public standards for decent, safe, and
14 sanitary housing as required by applicable codes or require-
15 ments of the community development program.

16 LOANS

17 SEC. 9. (a) (1) After June 30, 1974, the Secretary
18 is authorized to make loans to community development agen-
19 cies to provide financing for planning and operating activities
20 pending the receipt by such agencies of grant assistance under
21 section 8 and to provide interim financing for activities
22 authorized under section 4 (5) .

23 (2) Loans under this subsection shall bear interest at
24 such rates (not less than the applicable going Federal rate,
25 as defined in section 110 (g) of the Housing Act of 1949) ,

1 and shall be secured in such manner and be repaid within
2 such period of time as the Secretary shall prescribe.

3 (3) (A) To obtain funds for advances and loan disburse-
4 ments under this subsection, the Secretary may issue and
5 have outstanding at any one time notes or other obligations
6 for purchase by the Secretary of the Treasury in an amount
7 which shall not, unless authorized by the President, exceed
8 \$1,500,000,000. For the purpose of establishing unpaid obli-
9 gations as of a given date against the authorization con-
10 tained in the preceding sentence, the Secretary shall estimate
11 the maximum amount to be required to be borrowed from
12 the Treasury and outstanding at any one time with respect
13 to loan commitments in effect on such date.

14 (B) Notes or other obligations issued by the Secre-
15 tary under this paragraph (3) shall be in such forms and
16 denominations, have such maturities, and be subject to such
17 terms and conditions as may be prescribed by the Secretary,
18 with the approval of the Secretary of the Treasury. Such
19 notes or other obligations shall bear interest at a rate deter-
20 mined by the Secretary of the Treasury, taking into consid-
21 eration the current average rate on outstanding marketable
22 obligations of the United States as of the last day of the
23 month preceding the issuance of such notes or other obliga-
24 tions. The Secretary of the Treasury is authorized and di-

1 rected to purchase any notes and other obligations of the
2 Secretary issued under this paragraph (3) and for such
3 purpose is authorized to use as a public debt transaction
4 the proceeds from the sale of any securities issued under
5 the Second Liberty Bond Act, as amended, and the pur-
6 poses for which securities may be issued under such Act,
7 as amended, are extended to include any purchases of such
8 notes and other obligations. The Secretary of the Treasury
9 may at any time sell any of such notes or other obligations
10 so acquired. All redemptions, purchases, and sales by the
11 Secretary of the Treasury of such notes or other obligations
12 shall be treated as public debt transactions of the United
13 States.

14 (b) Section 312(a)(1) of the Housing Act of 1964
15 is amended—

16 (1) by striking out the colon at the end of sub-
17 paragraph (C) and inserting in lieu thereof “; or”; and

18 (2) by adding at the end thereof a new subpara-
19 graph as follows:

20 “(D) the property is determined to require reha-
21 bilitation, and such rehabilitation is necessary or appro-
22 priate to the execution of an approved community devel-
23 opment program under the Community Development
24 Assistance Act of 1973;”.

1 CONSULTATION

2 SEC. 10. In carrying out the provisions of this Act,
3 including the issuance of regulations, the Secretary shall con-
4 sult with other Federal departments and agencies administer-
5 ing Federal grant-in-aid programs.

6 TECHNICAL ASSISTANCE

7 SEC. 11. (a) The Secretary is authorized to undertake
8 such activities as he determines to be desirable to provide
9 technical assistance to smaller communities to assist such
10 communities in planning, developing, and administering com-
11 munity development programs. Such assistance may be fur-
12 nished either directly or by contracts or other arrangements,
13 including contracts or arrangements with rural development
14 and area planning agencies. The Secretary may utilize for
15 demonstration purposes smaller communities carrying out
16 meritorious programs involving community development, or
17 comprehensive city demonstration programs under title I of
18 the Demonstration Cities and Metropolitan Development Act
19 of 1966.

20 (b) Not later than one hundred and eighty days after
21 the date of enactment of this Act, the Secretary shall
22 make a report to the Congress setting forth his findings and
23 recommendations with respect to —

24 (1) existing and recommended Federal, State, and
25 local programs relating to community development in
26 smaller communities;

1 (2) the significance of such programs in assisting
2 the larger urban areas to solve their acute problems by
3 reducing population density;

4 (3) the need for unified Federal agency coordina-
5 tion, control, or direction of such programs;

6 (4) the extent to which the Department of Hous-
7 ing and Urban Development should participate in such
8 coordination, control, or direction, and the manner and
9 method of achieving that participation; and

10 (5) the appropriate allocation of Federal funds for
11 community development in smaller communities and in
12 the larger urban areas.

13 (c) As used in this section, the term “smaller commu-
14 nities” means any municipality or other political subdivision
15 having a population of fifty thousand or less according to
16 the most recent census.

17 LABOR STANDARDS

18 SEC. 12. The provisions of section 109 of the Housing
19 Act of 1949 shall be applicable in the administration of the
20 authority conferred by this Act.

21 UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY
22 ACQUISITION POLICIES ACT OF 1970

23 SEC. 13. Section 217 of the Uniform Relocation As-
24 sistance and Real Property Acquisition Policies Act of 1970
25 is amended—

26

1 (1) by striking out “or” after “Housing Act of
2 1949, as amended,” and

3 (2) by adding after “Demonstration Cities and
4 Metropolitan Development Act of 1966” the following:
5 “, or as a direct result of any community development
6 activity assisted under the Community Development
7 Assistance Act of 1973”.

8 INTERSTATE AGREEMENTS

9 SEC. 14. The consent of the Congress is hereby given
10 to any two or more States to enter into agreements or com-
11 pacts, not in conflict with any law of the United States, for
12 cooperative effort and mutual assistance in support of com-
13 munity development planning and programs carried out un-
14 der this Act as they pertain to interstate areas and to
15 localities within such States, and to establish such agencies,
16 joint or otherwise, as they may deem desirable for making
17 such agreements and compacts effective.

18 EFFECTIVE DATE; TRANSITIONAL TERMINATION OF
19 EXISTING PROGRAMS

20 SEC. 15. (a) This Act takes effect on the date of its
21 enactment.

22 (b) After June 30, 1974, no new grants or loans shall
23 be made (except with respect to projects or programs for
24 which funds have been committed on or before that date)
25 pursuant to—

- 1 (1) title II of the Housing Amendments of 1955;
- 2 (2) title VII of the Housing Act of 1961;
- 3 (3) section 702 of the Housing Act of 1954;
- 4 (4) title VII of the Housing and Urban Develop-
- 5 ment Act of 1965; and
- 6 (5) title I of the Housing Act of 1949.

7 (c) Section 3689 of the Revised Statutes, as amended
8 (31 U.S.C. 711), is amended by adding at the end thereof
9 a new paragraph as follows:

10 “(22) For payments required from time to time under
11 contracts entered into pursuant to section 103(b) of the
12 Housing Act of 1949 with respect to projects or programs
13 for which funds have been committed on or before June 30,
14 1974, and for which funds have not previously been
15 appropriated.”

16 (d) The Secretary is authorized to transfer the assets
17 and liabilities of any superseded or nonactive program of
18 housing or urban development to the revolving fund for
19 liquidating programs established pursuant to title II of the
20 Independent Offices Appropriation Act of 1955 (Public Law
21 81-428; 68 Stat. 272, 295).

93D CONGRESS
1ST SESSION

S. 1753

IN THE SENATE OF THE UNITED STATES

MAY 8, 1973

Mr. HARTKE introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To amend the Interstate Land Sales Full Disclosure Act to provide for the licensing of developers in order to insure the maintenance of high professional standards, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. The Interstate Land Sales Full Disclosure
4 Act is amended by inserting after section 1410 the follow-
5 ing new section:

6 “LICENSING OF DEVELOPERS

7 “SEC. 1410A. (a) No developer or agent shall make
8 use of any means or instruments of transportation or com-
9 munication to sell or lease any lot in any subdivision or offer

1 to sell or lease any such lot unless such developer or agent
2 has a license issued by the Secretary under this section.

3 “(b) The Secretary shall issue a license to a developer
4 or agent if the Secretary determines, on the basis of an ap-
5 plication in such form as the Secretary may prescribe, that
6 the developer or agent—

7 “(1) is of good character or business reputation;

8 “(2) meets such requirements as the Secretary may
9 prescribe with respect to education, training, or experi-
10 ence; and

11 “(3) has not committed within the five years pre-
12 ceding the date on which the application is filed any
13 act which would be grounds for suspension of a license
14 under subsection (c).

15 “Any developer or agent whose application is denied
16 shall promptly be given an opportunity for a hearing to show
17 cause why the license should be issued.

18 “(c) The Secretary shall suspend for not less than one
19 year or more than five years any license issued by him under
20 subsection (b) if he determines that—

21 “(1) the licensee has submitted untrue information
22 or has omitted to state any material fact in connection
23 with the issuance of the license;

24 “(2) the licensee has been held liable for damages
25 in an action under section 1410 of this title;

1 “(3) the licensee has been convicted of any felony;

2 “(4) the licensee has failed to exercise proper su-
3 pervision of his agents or employees and such failure has
4 resulted in the imposition of liability referred to in clause
5 (2) on, or in a conviction referred to in clause (3) of
6 any such agent or employee;

7 “(5) the licensee has violated any term, condition,
8 or limitation imposed in connection with the issuance of
9 his license;

10 “(6) the licensee has engaged in any act which is
11 unlawful under section 804, 805, or 806 of Public Law
12 90-284; or

13 “(7) the licensee has engaged in any act or prac-
14 tice which—

15 “(a) constitutes a conflict of interest or breach
16 of trust, and

17 “(b) results in the imposition of any criminal
18 or civil action by any Federal, State, or local regu-
19 latory authority or professional association.

20 “All actions of the Secretary under this subsection shall
21 be subject to the provisions of section 554 of title 5, United
22 States Code.”

23 SEC. 2. The amendment made by section 1 of this Act
24 shall become effective upon the expiration of one year follow-
25 ing the date of enactment, except that the Secretary may take

1 such actions as may be necessary or appropriate prior to
2 such effective date in order to issue licenses referred to in the
3 amendment made by the first section of this Act prior to
4 such date.

93d CONGRESS
1st Session

S. 1834

IN THE SENATE OF THE UNITED STATES

MAY 16, 1973

Mr. FONG introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To amend the National Housing Act to increase the maximum mortgage amounts insurable in the case of property located in Alaska, Guam, or Hawaii, and to amend section 5 (c) of the Home Owners Loan Act of 1933 to authorize an increase in the principal amount of mortgages on properties in Alaska, Guam, and Hawaii to compensate for higher prevailing costs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) the first sentence of section 214 of the National
4 Housing Act is amended by striking out “one-half” and in-
5 serting “100 per centum”.

6 (b) Section 203 (b) (2) of such Act is amended—

7 (1) by striking out “80 per centum” in clause (iii)

2

1 of the matter preceding the next to the last sentence and
2 inserting in lieu thereof "85 per centum"; and

3 (2) by striking out "90 per centum" in clause (ii)
4 of the next to the last sentence and inserting in lieu
5 thereof "95 per centum".

6 SEC. 2. The first proviso to the first sentence of sec-
7 tion 5 (c) of the Home Owners Loan Act of 1933 is amended
8 by inserting after "any such lien," the following: "except
9 that with respect to dwellings in Alaska, Guam, and Hawaii
10 the foregoing limitations may, by regulation of the Board, be
11 increased by not to exceed 46.5 per centum of the dollar
12 amount otherwise applicable;"

93^d CONGRESS
1ST SESSION

S. 1850

IN THE SENATE OF THE UNITED STATES

MAY 21, 1973

Mr. SPARKMAN (for himself and Mr. TOWER) introduced the following bill;
which was read twice and referred to the Committee on Banking, Housing
and Urban Affairs

A BILL

To amend section 507 of the Housing Act of 1949 to make the
veterans' preference applicable to veterans of the post-Korean
era, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) section 507 of the Housing Act of 1949 is amended
4 by inserting after "concurrent resolution of Congress" each
5 time it appears therein the following: "or during the period
6 beginning after January 31, 1955, and ending on August 4,
7 1964, or during the Vietnam era (as defined in section 101
8 (29) of title 38, United States Code)".

9 (b) The third sentence of such section is amended by
10 inserting before the period at the end thereof the following:
11 "or era".

93^D CONGRESS
1ST SESSION

S. 1851

IN THE SENATE OF THE UNITED STATES

MAY 21, 1973

Mr. SPARKMAN (for himself and Mr. TOWER) introduced the following bill;
which was read twice and referred to the Committee on Banking, Housing
and Urban Affairs

A BILL

To amend title V of the Housing Act of 1949 to provide for the
use of fee appraisers and construction inspectors, and for
other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) section 506 (a) of the Housing Act of 1949 is
4 amended by striking out “, as may be required by the
5 Secretary, by competent employees of the Secretary” and
6 inserting in lieu thereof “as required by the Secretary”.

7 (b) Section 517 (j) (3) of such Act is amended by
8 inserting after “borrowers,” the following: “and other serv-
9 ices customary in the industry, construction inspections, com-
10 mercial appraisals, servicing of loans, and other related pro-
11 gram services and expenses.”.

93^d CONGRESS
1ST SESSION

S. 1967

IN THE SENATE OF THE UNITED STATES

JUNE 7, 1973

Mr. SPARKMAN (for himself and Mr. TOWER) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To amend title V of the Housing Act of 1949 to expressly authorize the collection of taxes and insurance from rural housing borrowers, to authorize fees and charges to be available for administrative expenses, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 502 (a) of the Housing Act of 1949 is amended
4 by—

5 (1) revising the second sentence to read as follows:

6 “Loans made, insured, or guaranteed under this title and
7 applications therefor shall be conditioned on the payment
8 of such fees and other charges as the Secretary may re-
9 quire and borrowers under this title shall prepay to the

II

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1 Secretary as escrow agent such taxes and insurance as he
2 may require, on such terms and conditions as he may
3 prescribe.”;

4 (2) striking out in section 517 (d) “as it becomes
5 due”;

6 (3) revising section 517 (i) to read as follows:
7 “Fees and other charges collected by the Secretary shall
8 be deposited in the fund and shall be available to pay the
9 Secretary’s costs of administration in carrying out the
10 provisions of this title.”;

11 (4) substituting the following language for sec-
12 tion 517 (j) (1) : “to pay amounts to which the holder of
13 the note is entitled in accordance with an insurance or
14 sale agreement under this section without reference to
15 the payment terms of the insured note; and”;

16 (5) striking out section 517 (j) (2) and renumber-
17 ing section 517 (j) (3) to 517 (j) (2).

93^d CONGRESS
1st Session

S. 1968

IN THE SENATE OF THE UNITED STATES

JUNE 7, 1973

Mr. SPARKMAN (for himself and Mr. TOWER) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To amend title V of the Housing Act of 1949 to transfer certain farm labor housing and rural rental housing loans and related liabilities from the Agricultural Credit Insurance Fund to the Rural Housing Insurance Fund, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That title V of the Housing Act of 1949 is amended by
4 adding at the end of section 517 (b) the following: "The
5 notes held in the Agricultural Credit Insurance Fund (7
6 U.S.C. 1929) which evidence loans made or insured by the
7 Secretary under section 514 or 515 (b), the rights and
8 liabilities of said fund under insurance contracts relating to

1 such loans held by insured investors, the mortgages securing
2 the obligations of the borrowers under such loans held in the
3 fund or by insured investors, and all rights to subsequent
4 collections on and proceeds of such notes, contracts, and
5 mortgages, are hereby transferred to the Rural Housing In-
6 surance Fund and for the purposes of this and any other
7 Act shall be subject to the provisions of this section as if
8 created pursuant thereto. The Rural Housing Insurance
9 Fund shall compensate the Agricultural Credit Insurance
10 Fund for the aggregate unpaid principal balance plus ac-
11 crued interest of the notes so transferred."

93^d CONGRESS
1ST SESSION

S. 1978

IN THE SENATE OF THE UNITED STATES

JUNE 12, 1973

Mr. BEALL introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To amend laws relating to the Federal National Mortgage Association.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That clause (C) of the second sentence of section 302 (b)
4 (2) of the National Housing Act is amended by striking out
5 the word "private".

II

93^D CONGRESS
1ST SESSION

S. 1997

IN THE SENATE OF THE UNITED STATES

JUNE 14, 1973

Mr. Moss introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To authorize the Secretary of Housing and Urban Development to encourage and assist in the development on a demonstration basis of several carefully planned projects to meet the special health-care and related needs of elderly persons in a campus-type setting.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the “Campuses for the
4 Elderly Act”.

5 SEC. 2. For the purposes of this Act—

6 (1) The term “Secretary” means the Secretary of
7 Housing and Urban Development.

8 (2) The term “skilled nursing home” means a facility
9 which (A) meets requirements under title XIX of the

1 Social Security Act, and (B) is equipped to accommodate
2 at least one hundred and twenty patients.

3 (3) The term "congregate living facility" means a
4 facility which includes (A) one or more residential struc-
5 tures containing at least one hundred dwelling units in the
6 aggregate, and (B) one or more central dining facilities and
7 such other shared facilities as may be approved by the Secre-
8 tary to serve the needs of the residents.

9 (4) The term "rest home" means a health facility with
10 nursing supervision conforming to criteria and standards pre-
11 scribed by the Secretary for the accommodation of at least
12 100 patients.

13 (5) The term "multifamily residential facility" means
14 one or more structures suitable for dwelling use by at least
15 100 elderly families (including single elderly persons) which
16 meets standards and criteria comparable to those which are
17 applicable to housing constructed with assistance under sec-
18 tion 202 of the Housing Act of 1959.

19 (6) The term "community center" means a facility con-
20 forming to criteria and standards prescribed by the Secretary
21 which provides such social, recreational, counseling, voca-
22 tional, and other services as the Secretary may require to
23 meet the needs of elderly persons in the community having
24 due regard to the availability of existing services in the
25 area.

1 (7) The term “elderly”, used adjectively with reference
2 to an individual or family, characterizes the individual or the
3 individuals comprising the family as being at least fifty-five
4 years of age.

5 SEC. 3. (a) In order to provide for the construction on
6 a demonstration basis of “campuses for the elderly”, the
7 Secretary shall institute a program under which qualified
8 organizations, public and private, will submit plans for the
9 development of carefully conceived and innovative projects
10 to meet the special health care, housing, and related needs
11 of elderly persons in a campus-type setting. Each such proj-
12 ect shall be designed to include in a complex of closely
13 related structures a skilled nursing home, a congregate living
14 facility, a rest home, a multifamily residential facility, and a
15 community center. From among the plans submitted the
16 Secretary shall select three which he determines are most
17 promising in furtherance of the objectives of this Act. To
18 the sponsors submitting the plans so selected, the Secretary
19 shall award appropriate plaques and certificates for excellence
20 in the design of health-care and related facilities for senior
21 citizens.

22 (b) (1) For the purpose of assisting the owner-sponsor
23 of a project designed in accordance with a plan selected by
24 the Secretary under subsection (a) to finance debt service
25 charges arising in connection with the development thereof

1 the Secretary is authorized to make, and contract to make,
2 interest subsidy payments to the holder of any mortgage cov-
3 ering such project and insured under section 232 (i) of the
4 National Housing Act. Such payments shall be in an amount
5 not exceeding the difference between the monthly payment
6 for principal, interest, and mortgage insurance premiums
7 which the project owner as mortgagor is obliged to pay
8 under the mortgage and the monthly payment for principal
9 and interest such owner would be obliged to pay if the mort-
10 gage were to bear interest at the rate of 1 per centum per
11 annum.

12 (2) The Secretary may include in the payment to the
13 mortgagee such amount, in addition to the amount computed
14 under paragraph (1), as he deems appropriate to reimburse
15 the mortgagee for its expenses in handling the mortgage.

16 (3) As a condition for receiving the benefits of interest
17 subsidy payments under this section, the project owner shall
18 operate the project in accordance with such requirements as
19 the Secretary may prescribe. In addition to establishing such
20 requirements, the Secretary is authorized to make such rules
21 and regulations, to enter into such agreements, and to adopt
22 such procedures as he deems necessary or desirable to carry
23 out the objectives of this Act.

24 (4) There are authorized to be appropriated such sums
25 as may be necessary to make interest subsidy payments under

1 contracts entered into under this subsection. Payments pur-
2 suant to such contracts shall not exceed \$15 million per
3 annum.

4 (c) Section 232 of the National Housing Act is amended
5 by adding at the end thereof the following:

6 “(i) The Secretary is further authorized to insure and to
7 make commitments to insure mortgages (including advances
8 on mortgages during construction) secured by properties in
9 projects to be carried out in accordance with plans selected
10 by the Secretary of Health, Education, and Welfare under
11 section 3(a) of the Campuses for the Elderly Act. Such
12 insurance shall be provided in accordance with the provisions
13 of this section subject to the following limitations and re-
14 quirements:

15 “(A) Mortgage insurance shall be provided with
16 respect to not more than three such projects each one of
17 which is designed to demonstrate the feasibility of a par-
18 ticular plan.

19 “(B) The mortgage shall involve a principal obli-
20 gation in an amount not to exceed \$———, and
21 not to exceed 100 per centum (90 per centum in the case
22 of a mortgagor which is an entity other than a public
23 body or nonprofit organization) of the estimated value
24 of the project (including equipment to be used in the
25 operation of the facilities comprising the project) when

1 the proposed improvements are completed and the
2 equipment is installed.

3 “(C) The Secretary shall approve the site of any
4 project with respect to which mortgage insurance is pro-
5 vided under this subsection only after consultation with
6 the Secretary of Health, Education, and Welfare, and
7 regulations of the Secretary relating in any way to the
8 facilities comprising any such project, or the operation
9 thereof, shall be issued only after such consultation.”.

10 SEC. 4. (a) Not later than two years after plans
11 selected by the Secretary for the development of demon-
12 stration “campuses for the elderly” projects have been im-
13 plemented with assistance under this Act, an evaluation
14 of such projects shall be undertaken to determine their
15 effectiveness and suitability in meeting the needs of elderly
16 persons. Such evaluation shall be made by a committee
17 consisting of the following members:

18 (1) three Members of the Congress to be appointed
19 jointly by the President of the Senate and the Speaker
20 of the House of Representatives; and

21 (2) six members to be appointed by the Secretary,
22 of which three shall be representative of the medical
23 profession and three shall be persons who have had
24 experience in the administration of health-care facilities,
25 both proprietary and nonproprietary.

1 The committee shall submit to the Secretary for transmittal
2 to the Congress a report with respect to its findings and
3 recommendations not later than 6 months after the date on
4 which the committee is fully organized.

5 (b) The committee, without regard to the provisions of
6 title 5, United States Code, governing appointments in the
7 competitive service, and without regard to the provisions
8 of chapter 51 and subchapter III of chapter 53 of such title
9 relating to classification and General Schedule pay rates,
10 may appoint and fix the compensation of such staff personnel
11 as it deems necessary.

12 (c) (1) Any member of the committee who is appointed
13 from the legislative branch of the Government shall serve
14 without compensation in addition to that received in his
15 regular employment, but shall be entitled to reimbursement
16 for travel, subsistence, and other necessary expenses incurred
17 by him in the performance of duties vested in the committee.

18 (2) Members of the committee, other than those re-
19 ferred to in paragraph (1), shall receive compensation at the
20 rate of \$25 per day for each day they are engaged in the
21 performance of their duties as members of the committee and
22 shall be entitled to reimbursement for travel, subsistence, and
23 other necessary expenses incurred by them in the perform-
24 ance of their duties as members of the committee.

1 (d) There are authorized to be appropriated such sums
2 (not to exceed \$70,000) as may be necessary to carry out
3 this section.

4 (e) The committee shall cease to exist thirty days after
5 the submission of its report.

IN THE SENATE OF THE UNITED STATES

Mr. HATHAWAY introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

To recognize the role of certain State and local agencies in assuming the responsibility for carrying out low- and moderate-income housing programs, to affirm the continuing responsibility of the Federal Government in carrying out such programs, to facilitate the interim operation of such programs by those State and local agencies, to provide for the resumption of the operation of such programs by the Federal Government in an expeditious manner, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 FINDINGS

4 SECTION 1. The Congress finds and declares that—

5 (1) the achievement of the national housing goal, as
6 set forth in section 2 of the Housing Act of 1949, of “a

1 decent home and a suitable living environment for every
2 American family'' is the responsibility of the Federal
3 Government;

4 (2) recent budgetary and economic actions and con-
5 ditions have temporarily reduced the extent of the Federal
6 Government's efforts toward achieving such goal;

7 (3) agencies and officials of several States have un-
8 dertaken, during the period of reduced Federal efforts,
9 to perform the Federal role by operating programs to pro-
10 vide housing for families of low and moderate income;

11 (4) this extraordinary effort by such State agencies
12 and officials should be encouraged and assisted by the Fed-
13 eral Government;

14 (5) the Secretary of Housing and Urban Develop-
15 ment and the Secretary of Agriculture will assume finan-
16 cial responsibility for these interim programs, but in the
17 meantime, such Secretaries should be authorized (A) to
18 assist State agencies and officials in administering such pro-
19 grams during the period of reduced Federal efforts, and
20 (B) to establish plans and procedures for the prompt,
21 efficient, and orderly resumption of the Federal Govern-
22 ment's efforts toward achieving the national housing goal.

23 RESUMPTION OF FEDERAL ROLE

24 SEC. 2. (a) At such time as the Secretary of Housing and
25 Urban Development enters into new contracts under the pro-

1 visions of section 235 or 236 of the National Housing Act,
2 section 312 of the Housing Act of 1964 or section 23 of the
3 United States Housing Act of 1937, he shall enter into con-
4 tracts to provide assistance payments or contributions with
5 respect to dwelling units or projects which, prior to such
6 time—

7 (1) were operated with subsidies or other similar
8 assistance from State agencies or units of local govern-
9 ment; and

10 (2) were operated in substantially the same manner
11 and for substantially the same purposes as dwelling
12 units or projects subject to such provisions.

13 The amount of any assistance payment or contribution under
14 this subsection shall be an amount which would be payable
15 if the dwelling unit or project were subject to any such pro-
16 vision, as determined by the Secretary. Any sums available
17 for assistance payments or contributions under any such
18 provision shall be available for the purposes of this subsec-
19 tion. Payments or contributions under this subsection shall
20 be made to the appropriate State agency or unit of local
21 government.

22 (b) At such time as the Secretary of Agriculture enters
23 into new loan agreements upon which the interest is deter-
24 mined in accordance with the provisions of section 521 of
25 the Housing Act of 1949, he shall enter into contracts to

4

1 make assistance payments with respect to dwelling units or
2 projects which, prior to such time—

3 (1) were operated with subsidies or other similar
4 assistance from State agencies or units of local govern-
5 ment; and

6 (2) were operated in substantially the same man-
7 ner and for substantially the same purposes as dwelling
8 units or projects with respect to which the interest rate
9 is determined under such provisions.

10 The amount of any assistance payment under this subsec-
11 tion shall be determined as the difference between (A) the
12 market rate of interest on the loan with respect to which
13 the payment is made, and (B) the rate of interest such loan
14 would bear if such loan were subject to section 521 of the
15 Housing Act of 1949. Assistance payments under this subsec-
16 tion shall be made from the Rural Housing Insurance Fund,
17 and such fund shall be reimbursed by annual appropriations
18 in an amount equal to such payments. Payments under this
19 subsection shall be made to the appropriate State agency or
20 unit of local government.

21 TECHNICAL ASSISTANCE AND PROCEDURES

22 SEC. 3. (a) The Secretary of Housing and Urban De-
23 velopment and the Secretary of Agriculture are authorized
24 to furnish technical assistance and training to State and
25 local agencies and officials to assist them in carrying out

1 programs to provide low- and moderate-income housing
2 which serve substantially the same purposes as programs
3 carried out under sections 235 and 236 of the National Hous-
4 ing Act, section 23 of the United States Housing Act of
5 1937, and section 521 of the Housing Act of 1949.

6 (b) The Secretary of Housing and Urban Development
7 and the Secretary of Agriculture are directed to establish
8 plans and procedures to assure the prompt, efficient, and or-
9 derly resumption of the Federal Government's efforts toward
10 achieving the national housing goal, as described in section 2
11 (a) and (b).

12 REPORT

13 SEC. 4. The Secretary of Housing and Urban Develop-
14 ment and the Secretary of Agriculture shall each report to
15 the Congress from time to time, but at least once each year
16 during the period of the reduced Federal housing effort, on
17 their respective activities under this Act.

IN THE SENATE OF THE UNITED STATES

Mr. HART introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

To regulate interstate commerce by providing for uniform and full disclosure of certain information with respect to the sale of dwellings for occupancy by not more than four families in order to promote sound and effective price competition and to prohibit unfair and deceptive sales and other anticompetitive practices, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the “Truth in Housing Act”.

4 FINDINGS AND PURPOSE

5 SEC. 2. The Congress finds that competition in the
6 business of selling dwellings for occupancy by not more than
7 four families and competition in making mortgage credit

1 available for the purchase of such dwellings would be im-
2 proved by the uniform and full disclosure of certain informa-
3 tion with respect to their condition and useful life and the
4 condition of their components, including, but not limited to,
5 structural components and plumbing, heating, and electrical
6 systems. It is the purpose of this Act to promote sound and
7 effective price competition by minimizing the capacity of ad-
8 vertising and sales practices to deceive the consumer, and
9 by enabling the consumer to obtain the facts necessary to
10 make an informed choice with respect to the cost of pur-
11 chasing and maintaining such a dwelling.

12 **DEFINITIONS**

13 **SEC. 3.** For the purpose of this Act, the term—

14 (1) “Commission” means the Federal Trade Com-
15 mission;

16 (2) “substantial defect” means a defect which seri-
17 ously affects the use and livability of any dwelling unit
18 and which a proper inspection on the date of closing
19 could reasonably be expected to disclose; and

20 (3) “date of closing” means the date on which the
21 beneficial title to the property is transferred to the
22 purchaser.

23 **GENERAL REQUIREMENTS OF DISCLOSURE**

24 **SEC. 4. (a)** Any person who sells or acts as an agent in
25 the sale of or who furnishes mortgage credit for the purchase

3

1 of a dwelling for occupancy by not more than four families
2 shall be responsible for the written disclosure, in such form
3 as the Commission may require, to the purchaser of the dwell-
4 ing of any substantial defects which exist as of the date of
5 the disclosure.

6 (b) Such written disclosure shall include any substantial
7 defects as of that date relating to—

8 (1) the structure and the major components thereof;

9 (2) the plumbing system;

10 (3) the heating system;

11 (4) the electrical system; and

12 (5) such other matters as the Commission may
13 require.

14 (c) Such written disclosure shall also include the esti-
15 mated cost of eliminating any such defect, and the estimated
16 remaining useful life of each of the matters enumerated in the
17 preceding subsection.

18 (d) Any person who sells, or acts as an agent in the sale
19 of, or makes mortgage credit available for the purchase of, a
20 dwelling for occupancy by not more than four families shall
21 be reimbursed at the closing by the purchaser for the cost of
22 any inspection relating to such written disclosure.

23 (e) Any contract for the purchase of a dwelling for
24 occupancy by not more than four families, where the written
25 disclosure required by this section has not been made to the

1 purchaser in advance or at the time of his signing, shall be
2 voidable at the option of the purchaser. A purchaser may
3 revoke such contract or agreement within ninety-six hours,
4 where he has received such written disclosure less than
5 forty-eight hours before he signed the contract or agreement,
6 and the contract or agreement shall so provide, except that
7 the contract or agreement may stipulate that the foregoing
8 revocation authority shall not apply in the case of a purchaser
9 who (1) has received such written disclosure and inspected
10 the one to four family dwelling to be purchased in advance
11 of signing the contract or agreement, and (2) acknowledges
12 by his signature that he has made such inspection and has
13 read and understood such report.

14 UNLAWFUL SALES ACTIVITIES

15 SEC. 5. (a) It shall be unlawful for any person to sell,
16 act as an agent in the sale of, or make mortgage credit avail-
17 able for the purchase of, a dwelling for occupancy by not
18 more than four families without conforming to the provisions
19 of this Act.

20 (b) The sale of, or the furnishing of mortgage credit for
21 the purchase of, such a dwelling in violation of subsection (a)
22 constitutes an unfair and deceptive act or practice within
23 the meaning of section 5 of the Federal Trade Commission
24 Act.

5

1 CIVIL LIABILITIES

2 SEC. 6. (a) If any part of a written disclosure required
3 by section 4 (b) contains an untrue statement of a material
4 fact or fails to state a material fact required to be stated
5 therein, the purchaser acquiring the dwelling covered by such
6 written disclosure (unless he knew of such untruth or omis-
7 sion at the time of closing) may bring an action in any
8 court of competent jurisdiction, against the seller or his agent
9 in the sale, and the person who furnished mortgage credit
10 for the purchase of that dwelling.

11 (b) In any action brought under subsection (a), the
12 plaintiff is entitled to recover actual damages and not more
13 than \$1,000 punitive damages, together with court costs
14 and reasonable attorney fees.

15 LIMITATION OF ACTIONS

16 SEC. 7. No action shall be maintained to enforce any
17 liability created under section 6 unless it is brought within
18 one year after the later of—

19 (1) the date of closing,

20 (2) the date on which the untrue statement or
21 omission of the material statement would have been dis-
22 covered by the exercise of reasonable diligence.

23 In no event shall any such action be brought more than three
24 years after the closing date on such purchase.

6

14 CONTRARY STIPULATIONS VOID

15 SEC. 8. Any condition, stipulation, or provision contrary
16 to the provisions of this Act, or purporting to bind any
17 person acquiring any dwelling to which this Act applies to
18 waive compliance with any provision of this Act or with any
19 requirement of the Commission under this Act, shall be void.

20 ADDITIONAL REMEDIES

21 SEC. 9. The rights and remedies provided by this Act
22 shall be in addition to any other legal or equitable remedy
23 that may be available to a purchaser of a dwelling to which
24 this Act applies.

25 PENALTIES FOR VIOLATIONS

14 SEC. 10. Any person who willfully fails to make written
15 disclosure in violation of section 4 or who willfully, in such
16 written disclosure, makes any untrue statement of a material
17 fact or omits to state any material fact required to be stated
18 therein, shall upon conviction be fined not more than \$5,000
19 or imprisoned not more than five years, or both.

20 JURISDICTION OF OFFENSES AND SUITS

21 SEC. 11. The district courts of the United States shall
22 have jurisdiction of offenses under this Act, and shall have
23 concurrent jurisdiction with State courts, of all actions
24 brought under section 6. Any such action may be brought in
25 the district in which the defendant is found, or is an inhabi-

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1 tant, or transacts business, or in which the property is lo-
2 cated. Process in any such case may be served in any district
3 in which the defendant is an inhabitant or may be found.

4 ADMINISTRATION

5 SEC. 12. (a) This Act shall be administered and en-
6 forced by the Commission. The Secretary for Housing and
7 Urban Development, the Administrator for Veterans' Af-
8 fairs, and the Secretary of Agriculture shall provide such as-
9 sistance and information to the Commission as it may require.
10 The Commission is authorized to issue such rules and regu-
11 lations as may be necessary to achieve the purposes of this
12 Act. Prior to issuance of such rules and regulations, the Com-
13 mission shall consult with the Secretary for Housing and
14 Urban Development, the Administrator for Veterans' Af-
15 fairs, and the Secretary of Agriculture.

16 (b) In the exercise of its functions, the Commission may
17 obtain upon request the views of any other Federal agency
18 which, in the judgment of the Commission, exercises regu-
19 latory or supervisory functions with respect to any class of
20 persons subject to this Act.

21 ADVISORY COMMITTEE

22 SEC. 13. The Commission shall establish an advisory
23 committee to advise and consult with it in the exercise of its
24 functions under this Act. In appointing the members of the
25 committee, the Commission shall seek to achieve a fair rep-

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1 resentation of the public interest and of the interests of any
2 class of persons subject to the Act. The committee shall
3 meet from time to time at the call of the Commission, and
4 members thereof shall receive not to exceed \$100 per day
5 including traveltime, and shall be reimbursed for expenses of
6 travel and subsistence incurred while engaged in the per-
7 formance of their duties.

8 COOPERATION WITH STATE AUTHORITIES; JURISDICTION
9 OF REAL ESTATE COMMISSION OR SIMILAR BODY OF STATE

10 SEC. 14. (a) In the exercise of its functions under this
11 Act, the Commission shall cooperate with State authorities
12 charged with the responsibility of regulating the sale of dwell-
13 ings subject to the provisions of this Act. The Commission
14 may request the views of any State authority which, in the
15 judgment of the Commission, exercises regulatory or super-
16 visory functions with respect to any class of persons subject
17 to this Act.

18 (b) Nothing in this Act shall affect the jurisdiction or
19 power of the real estate commission (or any agency or office
20 performing like functions) of any State over the sale of any
21 such dwelling or such persons.

22 AUTHORIZATION OF APPROPRIATIONS

23 SEC. 15. There are authorized to be appropriated to the
24 Commission such sums as may be necessary to carry out the
25 provisions of this Act.

93^d CONGRESS
1ST SESSION

S. 2103

IN THE SENATE OF THE UNITED STATES

JUNE 28 (legislative day, JUNE 25), 1973

Mr. JAVITS introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To amend the Housing and Urban Development Act of 1970 to provide a more effective approach to the problem of developing and maintaining a rational relationship between building codes and related regulatory requirements and building technology in the United States, and to facilitate urgently needed cost-saving innovations in the building industry, through the establishment of an appropriate non-governmental instrument which can make definitive technical findings, insure that the findings are made available to all sectors of the economy, public and private, and provide an effective method for encouraging and facilitating Federal, State, and local acceptance and use of such findings.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 that the Housing and Urban Development Act of 1970 is
2 amended by adding at the end thereof the following new
3 title:

4 “TITLE X—NATIONAL INSTITUTE OF BUILDING
5 SCIENCES

6 “SEC. 1001. (a) (1) The Congress finds: (A) that the
7 lack of an authoritative national source to make findings and
8 to advise both the public and private sectors of the economy
9 with respect to the use of building science and technology in
10 achieving nationally acceptable standards and other technical
11 provision for use in Federal, State, and local housing and
12 building regulations is an obstacle to efforts by and imposes
13 severe burdens upon all those who procure, design, construct,
14 use, operate, maintain, and retire physical facilities, and fre-
15 quently results in the failure to take full advantage of new
16 and useful developments in technology which could improve
17 our living environment; (B) that the establishment of model
18 building codes or of a single national building code will not
19 completely resolve the problem because of the difficulty at all
20 levels of government in updating their housing and building
21 regulations to reflect new developments in technology, as well
22 as the irregularities and inconsistencies which arise in apply-
23 ing such requirements to particular localities or special local
24 conditions; (C) that the lack of uniform housing and build-
25 ing regulatory provisions increases the costs of construction

1 and thereby reduces the amount of housing, and other com-
2 munity facilities which can be provided; and (D) that the
3 existence of a single authoritative nationally recognized
4 institution to provide for the evaluation of new technology
5 could facilitate introduction of such innovations and their
6 acceptance at the Federal, State, and local levels.

7 “(2) The Congress further finds, however, that while
8 an authoritative source of technical findings is needed, various
9 private organizations and institutions, private industry, labor,
10 and Federal and other governmental agencies and entities are
11 presently engaged in building research, technology develop-
12 ment, testing, and evaluation, standards and model code
13 development and promulgation, and information dissemina-
14 tion. These existing activities should be encouraged and these
15 capabilities effectively utilized wherever possible and appro-
16 priate to the purposes of this section.

17 “(3) The Congress declares that an authoritative non-
18 governmental instrument needs to be created to address the
19 problems and issues described in paragraph (1), that the
20 creation of such an instrument should be initiated by the
21 Government, with the advice and assistance of the National
22 Academy of Sciences-National Academy of Engineering-
23 National Research Council (hereinafter referred to as the
24 ‘Academies-Research Council’) and of the various sectors
25 of the building community, including labor and management,

1 technical experts in building science and technology, and the
2 various levels of government.

3 “(b) (1) There is authorized to be established, for the
4 purposes described in subsection (a) (3), an appropriate
5 nonprofit, nongovernmental instrument to be known as the
6 ‘National Institute of Building Sciences’ (hereinafter re-
7 ferred to as the ‘Institute’), which shall not be an agency
8 or establishment of the United States Government. The
9 Institute shall be subject to the provisions of this section
10 and, to the extent consistent with this section, to a charter
11 of the Congress if such a charter is requested and issued or
12 to the District of Columbia Nonprofit Corporation Act if
13 that is deemed preferable.

14 “(2) The Academies-Research Council, along with other
15 agencies and organizations which are knowledgeable in the
16 field of building technology, shall advise and assist in (A)
17 the establishment of the Institute; (B) the development
18 of an organizational framework to encourage and pro-
19 vide for the maximum feasible participation of public and
20 private scientific, technical, and financial organizations, in-
21 stitutions, and agencies now engaged in activities pertinent
22 to the development, promulgation, and maintenance of per-
23 formance criteria, standards, and other technical provisions
24 for building codes and other regulations; and (C) the
25 promulgation of appropriate organizational rules and pro-

1 cedures including those for the selection and operation of a
2 technical staff, such rules and procedures to be based upon
3 the primary object of promoting the public interest and in-
4 suring that the widest possible variety of interests and ex-
5 perience essential to the functions of the Institute are repre-
6 sented in the Institute's operations. Recommendations of the
7 Academies-Research Council, shall be based upon consulta-
8 tions with and recommendations from various private or-
9 ganizations and institutions, labor, private industry, and gov-
10 ernmental agencies and entities operating in the field, and
11 the Consultative Council as provided for under subsection
12 (c) (8).

13 “(3) Nothing in this section shall be construed as ex-
14 pressing the intent of the Congress that the Academies-
15 Research Council itself be required to assume any function
16 or operation vested in the Institute by or under this section.

17 “(c) (1) The Institute shall have a Board of Directors
18 (hereinafter referred to as the ‘Board’) consisting of not
19 less than fifteen nor more than twenty-one members, ap-
20 pointed by the President of the United States by and with
21 the advice and consent of the Senate. The Board shall be
22 representative of the various segments of the building com-
23 munity, of the various regions of the country, and of the
24 consumers who are or would be affected by actions taken in
25 the exercise of the functions and responsibilities of the

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1 Institute, and shall include (A) representatives of the
2 construction industry, including representatives of construc-
3 tion labor organizations, product manufacturers, and builders,
4 housing management experts, and experts in building stand-
5 ards, codes, and fire safety, and (B) members representative
6 of the public interest in such numbers as may be necessary
7 to assure that a majority of the members of the Board
8 represent the public interest and that there is adequate
9 consideration by the Institute of consumer interests in the
10 exercise of its functions and responsibilities. Those repre-
11 senting the public interest on the Board shall include archi-
12 tects, professional engineers, officials of Federal, State, and
13 local agencies, and representatives of consumer organizations.
14 Such members of the Board shall hold no financial interest
15 or membership in, nor be employed by, or receive other
16 compensation from, any company, association, or other group
17 associated with the manufacture, distribution, installation, or
18 maintenance of specialized building products, equipment,
19 systems, subsystems, or other construction materials and
20 techniques for which there are available substitutes.

21 “(2) The members of the initial Board shall serve as
22 incorporators and shall take whatever actions are necessary
23 to establish the Institute as provided for under subsection
24 (b) (1).

25 “(3) The term of office of each member of the initial

1 and succeeding Boards shall be three years; except that
2 (A) any member appointed to fill a vacancy occurring prior
3 to the expiration of the term for which his predecessor was
4 appointed shall be appointed for the remainder of such
5 term; and (B) the terms of office of members first taking
6 office shall begin on the date of incorporation and shall
7 expire, as designated at the time of their appointment, one-
8 third at the end of one year, one-third at the end of two
9 years, and one-third at the end of three years. No member
10 shall be eligible to serve in excess of three consecutive terms
11 of three years each. Notwithstanding the preceding pro-
12 visions of this subsection, a member whose term has expired
13 may serve until his successor has qualified.

14 “(4) Any vacancy in the initial and succeeding Boards
15 shall not affect its power, but shall be filled in the manner
16 in which the original appointments were made, or, after
17 the first five years of operation, as provided for by the
18 organizational rules and procedures of the Institute.

19 “(5) The President shall designate one of the members
20 appointed to the initial Board as Chairman; thereafter, the
21 members of the initial and succeeding Boards shall annually
22 elect one of their number as Chairman. The members of the
23 Board shall also elect one or more of their Members as Vice
24 Chairman. Terms of the Chairman and Vice Chairman shall

1 be for one year and no individual shall serve as Chairman
2 or Vice Chairman for more than two consecutive terms.

3 “(6) The members of the initial or succeeding Boards
4 shall not, by reason of such membership, be deemed to be
5 employees of the United States Government. They shall,
6 while attending meetings of the Board or while engaged in
7 duties related to such meetings or in other activities of the
8 Board pursuant to this title, be entitled to receive compensa-
9 tion at the rate of \$100 per day including traveltime, and
10 while away from their homes or regular places of business
11 they may be allowed travel expenses, including per diem
12 in lieu of subsistence, equal to that authorized under section
13 5703 of title 5, United States Code, for persons in the Gov-
14 ernment service employed intermittently.

15 “(7) The Institute shall have a President and such
16 other executive officers and employees as may be appointed
17 by the Board at rates of compensation fixed by the Board.
18 No such executive officer or employee may receive any
19 salary or other compensation from any source other than
20 the Institute during the period of his employment by the
21 Institute.

22 “(8) The Institute shall establish, with the advice and
23 assistance of the Academies-Research Council and other
24 agencies and organizations which are knowledgeable in the
25 field of building technology, a Consultative Council, mem-

1 bership in which shall be available to representatives of all
2 appropriate private trade, professional, and labor organiza-
3 tions, private and public standards, code, and testing bodies,
4 public regulatory agencies, and consumer groups, so as to
5 insure a direct line of communication between such groups
6 and the Institute and a vehicle for representative hearings
7 on matters before the Institute.

8 “(d) (1) The Institute shall have no power to issue any
9 shares of stock, or to declare or pay any dividends.

10 “(2) No part of the income or assets of the Institute
11 shall inure to the benefit of any Director, officer, employee,
12 or any other individual except as salary or reasonable com-
13 pensation for services.

14 “(3) The Institute shall not contribute to or otherwise
15 support any political party or candidate for elective public
16 office.

17 “(e) (1) The Institute shall exercise its functions and
18 responsibilities in four general areas relating to building
19 regulations, as follows:

20 “(A) Development, promulgation, and maintenance
21 of nationally recognized performance criteria, standards,
22 and other technical provisions for maintenance of life,
23 safety, health and public welfare suitable for adoption by
24 building regulating jurisdictions and agencies, including
25 test methods and other evaluative techniques relating to

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1 building systems, subsystems, components, products, and
2 materials with due regard for consumer problems.

3 “(B) Evaluation and prequalification of existing and
4 new building technology in accordance with paragraph
5 (A).

6 “(C) Conduct of needed investigations in direct
7 support of paragraphs (A) and (B).

8 “(D) Assembly, storage, and dissemination of tech-
9 nical data and other information directly related to para-
10 graphs (A), (B), and (C).

11 “(2) The Institute in exercising its functions and re-
12 sponsibilities described in paragraph (1) shall assign and
13 delegate, to the maximum extent possible, responsibility for
14 conducting each of the needed activities described in para-
15 graph (1) to one or more of the private organizations, insti-
16 tutions, agencies, and Federal and other governmental en-
17 tities with a capacity to exercise or contribute to the exercise
18 of such responsibility, monitor the performance achieved
19 through assignment and delegation, and, when deemed neces-
20 sary, reassign and delegate such responsibility.

21 “(3) The Institute in exercising its functions and respon-
22 sibilities under paragraphs (1) and (2) shall (A) give
23 particular attention to the development of methods for en-
24 couraging all sectors of the economy to cooperate with the
25 Institute and to accept and use its technical findings, and to

1 accept and use the nationally recognized performance cri-
2 teria, standards, and other technical provisions developed
3 for use in Federal, State, and local building codes and other
4 regulations which result from the program of the Institute;

5 (B) seek to assure that its actions are coordinated with re-
6 lated requirements which are imposed in connection with
7 community and environmental development generally; and

8 (C) consult with the Department of Justice and other agen-
9 cies of government to the extent necessary to insure that
10 the national interest is protected and promoted in the exer-
11 cise of its functions and responsibilities.

12 “(f) (1) The Institute is authorized to accept contracts
13 and grants from Federal, State, and local governmental
14 agencies and other entities, and grants and donations from
15 private organizations, institutions, and individuals.

16 “(2) The Institute may, in accordance with rates and
17 schedules establish with guidance as provided under sub-
18 section (b) (2), establish fees and other charges for services
19 provided by the Institute or under its authorization.

20 “(3) Amounts received by the Institute under this sec-
21 tion shall be in addition to any amounts which may be ap-
22 propriated to provide its initial operating capital under sub-
23 section (h).

24 “(g) (1) Every department, agency, and establishment
25 of the Federal Government, in carrying out any building or

1 construction, of any building- or construction-related pro-
2 gram, which involves direct expenditures, and in develop-
3 ing technical requirements for any such building or construc-
4 tion, shall be encouraged to accept the technical findings of
5 the Institute, or any nationally recognized performance cri-
6 teria, standards, and other technical provisions for building
7 regulations brought about by the Institute, which may be
8 applicable.

9 “(2) All projects and programs involving Federal as-
10 sistance in the form of loans, grants, guarantees, insurance,
11 or technical aid, or in any other form, shall be en-
12 couraged to accept, use, and comply with any of the
13 technical findings of the Institute, or any nationally recog-
14 nized performance criteria, standards, and other technical
15 provisions for building codes and other regulations brought
16 about by the Institute, which may be applicable to the pur-
17 poses for which the assistance is to be used.

18 “(3) Every department, agency, and establishment of
19 the Federal Government having responsibility for building
20 or construction, or for building- or construction-related pro-
21 grams, is authorized and encouraged to request authorization
22 and appropriations for grants to the Institute for its general
23 support, and is authorized to contract with and accept con-
24 tracts from the Institute for specific services where deemed
25 appropriate by the responsible Federal official involved.

1 “(4) The Institute shall establish and carry on a specific
2 and continuing program of cooperation with the States and
3 their political subdivisions designed to encourage their accept-
4 ance and its technical findings and of nationally recognized
5 performance criteria, standards, and other technical provi-
6 sions for building regulations brought about by the Institute.
7 Such program shall include (A) efforts to encourage any
8 changes in existing State and local law to utilize or embody
9 such findings and regulatory provisions; and (B) assistance
10 to States in the development of inservice training programs
11 for building officials, and in the establishment of fully staffed
12 and qualified State technical agencies to advise local officials
13 on questions of technical interpretation.

14 “(h) There is authorized to be appropriated to the
15 Institute, over the first five fiscal years which end after the
16 date of the enactment of this section, the sum of \$10,000,000
17 for each of the first two such fiscal years, the sum of \$6,000,-
18 000 for each of the next two such fiscal years, and the sum
19 of \$4,000,000 for the last such fiscal year (with each appro-
20 priation to be available until expended or until six years shall
21 have passed), to provide the Institute with initial capital
22 adequate for the exercise of its functions and responsibilities
23 during such years; and thereafter the Institute shall be finan-
24 cially self-sustaining through the means described in sub-
25 section (f).

1 “(i) The Institute shall submit an annual report for the
2 proceeding fiscal year to the President for transmittal to the
3 Congress within sixty days of its receipt. The report shall
4 include a comprehensive and detailed report of the Institute’s
5 operations, activities, financial condition, and accomplish-
6 ments under this section and may include such recommen-
7 dations as the Institute deems appropriate”.

IN THE SENATE OF THE UNITED STATES

Mr. PROXMIRE introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

To provide for the direct financing of low- and moderate-income housing programs under sections 235 and 236 of the National Housing Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 PURPOSE

SECTION 1. It is the purpose of this Act to provide for a program for direct Government financing of the low- and moderate-income homeownership and rental housing programs under sections 235 and 236 of the National Housing Act and thereby to reduce the amount of interest subsidies under such program.

1 ESTABLISHMENT OF FUND

2 SEC. 2. Title II of the National Housing Act is amended
3 by adding at the end thereof the following new section:

4 "NATIONAL SUBSIDIZED HOUSING LOAN FUND

5 "SEC. 244. (a) There is established in the Treasury of
6 the United States a trust fund to be known as the National
7 Subsidized Housing Loan Fund (hereafter in this section
8 referred to as the 'fund'). The fund shall consist of—

9 "(1) amounts repaid by mortgagors as principal
10 and interest on loans from the fund;

11 "(2) proceeds credited to the fund under subsec-
12 tion (c);

13 "(3) appropriations to the fund under subsection
14 (d); and

15 "(4) receipts from any other source.

16 "(b) Amounts in the fund shall be available to the
17 Secretary for the purpose of making mortgage loans for the
18 same purposes and upon the same terms and conditions that
19 are applicable to private mortgagees under sections 235 and
20 236. A loan made under this section shall bear interest at
21 a rate equal to the effective rate which would be payable
22 by the borrower under a mortgage loan subject to section
23 235 or 236 after deducting from the monthly payment an
24 amount equal to the assistance payment computed under
25 section 235 (c) or 236 (c) with respect to such borrower.

1 The aggregate loans made under this subsection in any fiscal
2 year shall not exceed the limits on such lending authority
3 established in the annual appropriations Act for such fiscal
4 year.

5 “(c) To carry out the purposes of this section, the Sec-
6 retary is authorized to issue to the Secretary of the Treasury
7 notes or other obligations in an aggregate amount of not to
8 exceed \$————, in such forms and denominations,
9 bearing such maturities, and subject to such terms and condi-
10 tions as may be prescribed by the Secretary of the Treasury.
11 Such notes or other obligations shall bear interest at a rate
12 determined by the Secretary of the Treasury, taking into con-
13 sideration the current average market yield on outstanding
14 marketable obligations of the United States of comparable
15 maturities during the month preceding the issuance of the
16 notes or other obligations. The Secretary of the Treasury is
17 authorized and directed to purchase any notes and other obli-
18 gations issued hereunder and for that purpose he is author-
19 ized to use as a public debt transaction the proceeds from the
20 sale of any securities issued under the Second Liberty Bond
21 Act, and the purposes for which securities may be issued
22 under that Act are extended to include any purchase of such
23 notes and obligations. The Secretary of the Treasury may at
24 any time sell any of the notes or other obligations acquired
25 by him under this subsection. All redemptions, purchases,

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1 and sales by the Secretary of the Treasury of such notes or
2 other obligations shall be treated as public debt transactions
3 of the United States.

4 “(d) There is authorized to be appropriated to the fund
5 in each fiscal year a sum equal to the difference between the
6 amount of interest paid on obligations issued under subsection
7 (c) and the amount of interest paid by mortgagors on loans
8 made from the fund. Except in the case of sums appropriated
9 under this subsection, the receipts and disbursements of the
10 fund shall not be included in the total of the budget of the
11 United States Government and shall be exempt from any lim-
12 itation on annual expenditure or net lending.

13 “(e) To the maximum extent practicable, the Secretary
14 shall use the services and facilities of the private mortgage
15 industry in servicing mortgage loans made under this section.”

16 EFFECTIVE DATE

17 SEC. 3. The amendment made by section 2 becomes effec-
18 tive on July 1, 1973.

93^d CONGRESS
1ST SESSION

S. 2170

IN THE SENATE OF THE UNITED STATES

JULY 13, 1973

Mr. PROXMIRE introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To amend the United States Housing Act of 1937 to require that 20 per centum of new units in public housing projects be available for occupancy by large families.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That (a) section 10 (e) of the United States Housing Act of
4 1937 is amended by inserting at the end thereof the follow-
5 ing: "Not less than 20 per centum of the units placed under
6 an annual contributions contract during any fiscal year com-
7 mencing after June 30, 1973, shall have at least three bed-
8 rooms."

9 (b) Section 7 (b) of such Act is amended by inserting

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1 at the end thereof the following: "Such report shall also
2 include a statement of (1) the number of units having three
3 or more bedrooms which are placed under annual contribu-
4 tions contracts during the year covered by the report, and
5 (2) the ratio of such units to the total number of units placed
6 under such contracts during that year."

93^d CONGRESS
1ST SESSION

S. 2171

IN THE SENATE OF THE UNITED STATES

JULY 13, 1973

Mr. PROXMIRE introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To encourage low rise construction in public housing and elderly housing projects.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the Secretary of Housing and Urban Development may
4 enter into a contract or make a commitment after the date of
5 enactment of this Act (1) under the United States Housing
6 Act of 1937, or (2) under section 202 of the Housing Act of
7 1959, only if he determines—

8 (A) in the case of a project located in a community
9 with a population of less than five hundred thousand, that
10 such project does not involve high rise construction; or

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1 (B) in the case of a project which involves high
2 rise construction and which is located in a community
3 with a population of five hundred thousand or more, that
4 such construction involves a lower cost per dwelling unit
5 than low rise construction would involve.

93^D CONGRESS
1ST SESSION

S. 2175

IN THE SENATE OF THE UNITED STATES

JULY 13, 1973

Mr. BROOKE introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To amend section 24 of the Federal Reserve Act to simplify, consolidate, and improve the law relating to the investment in mortgages and residential real estate by national banks, and to enable the Federal Reserve banks to extend credit to member banks on any sound collateral at a uniform rate of interest.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Mortgage Investment
4 Act of 1973".

5 SEC. 2. Section 24 of the Federal Reserve Act is
6 amended to read as follows:

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1 "REAL ESTATE LOANS BY NATIONAL BANKS

2 "SEC. 24. (a) (1) Any national banking association
3 may make real estate loans secured by liens upon unimproved
4 real estate, upon improved real estate, including improved
5 farmland and improved business and residential properties,
6 and upon real estate to be improved by a building or build-
7 ings to be constructed or in the process of construction, in
8 an amount which when added to the amount unpaid, upon
9 prior mortgages, liens, and encumbrances, if any, upon such
10 real estate does not exceed the respective proportions of ap-
11 praised value as provided in this section. A loan secured by
12 real estate within the meaning of this section shall be in the
13 form of an obligation or obligations secured by a mortgage,
14 trust deed, or other instrument which shall constitute a lien
15 on real estate in fee or, under such rules and regulations as
16 may be prescribed by the Comptroller of the Currency, on
17 a leasehold under a lease which does not expire for at least
18 ten years beyond the maturity date of the loan, and any
19 national banking association may purchase or sell any obli-
20 gations so secured in whole or in part. The amount of any
21 such loan hereafter made shall not exceed $66\frac{2}{3}$ per centum
22 of the appraised value if such real estate is unimproved, 75
23 per centum of the appraised value if such real estate is im-
24 proved by off-site improvements such as streets, water,
25 sewers, or other utilities, 75 per centum of the appraised

1 value if such real estate is in the process of being improved
2 by a building or buildings to be constructed or in the process
3 of construction, or 90 per centum of the appraised value if
4 such real estate is improved by a building or buildings. If
5 any such loan exceeds 75 per centum of the appraised value
6 of the real estate or if the real estate is improved with a
7 one to four family dwelling, installment payments shall be
8 required which are sufficient to amortize the entire principal
9 of the loan within a period of not more than thirty years.

10 “ (2) The limitations and restrictions set forth in para-
11 graph (1) shall not prevent the renewal or extension of
12 loans heretofore made and shall not apply to real estate
13 loans (A) which are insured under the provisions of the
14 National Housing Act, (B) which are insured by the Sec-
15 retary of Agriculture pursuant to title I of the Bankhead-
16 Jones Farm Tenant Act, or the Act of August 28, 1937, as
17 amended, or title V of the Housing Act of 1949, as amended,
18 or (C) which are guaranteed by the Secretary of Housing
19 and Urban Development for the payment of the obligations
20 of which the full faith and credit of the United States is
21 pledged, and such limitations and restrictions shall not apply
22 to real estate loans which are fully guarantee or insured by
23 a State, or any agency or instrumentality thereof, or by a
24 State authority for the payment of the obligations of which
25 the faith and credit of the State is pledged, if under the terms

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1 of the guaranty or insurance agreement the association will
2 be assured of repayment in accordance with the terms of the
3 loan, or to any loan at least 20 per centum of which is guar-
4 anteed under chapter 37 of title 38, United States Code.

5 “ (3) Loans which are guaranteed or insured as described
6 in paragraph (2) shall not be taken into account in deter-
7 mining the amount of real estate loans which a national
8 banking association may make in relation to its capital and
9 surplus or its time and savings deposits or in determining
10 the amount of real estate loans secured by other than first
11 liens. Where the collateral for any loan consists partly of
12 real estate security and partly of other security, including a
13 guaranty or endorsement by or an obligation or commit-
14 ment of a person other than the borrower, only the amount
15 by which the loan exceeds the value as collateral of such
16 other security shall be considered a loan upon the security
17 of real estate, and in no event shall a loan be considered as
18 a real estate loan where there is a valid and binding agree-
19 ment entered into by a financially responsible lender or other
20 party either directly with the association or which is for
21 the benefit of or has been assigned to the association and
22 pursuant to which agreement the lender or other party is
23 required to advance to the association within sixty months
24 from the date of the making of said loan the full amount of
25 the loan to be made by the association upon the security

1 of real estate. Except as otherwise provided, no such associa-
2 tion shall make real estate loans in an aggregate sum in ex-
3 cess of the amount of the capital stock of such association
4 paid in and unimpaired plus the amount of its unimpaired
5 surplus fund, or in excess of 70 per centum of the amount
6 of its time and savings deposits, whichever is greater: *Pro-*
7 *vided*, That the amount unpaid upon real estate loans se-
8 cured by other than first liens when added to the amount
9 unpaid upon prior mortgages, liens, and encumbrances shall
10 not exceed in an aggregate sum 20 per centum of the amount
11 of the capital stock of such association paid in and unimpaired
12 plus 20 per centum of the amount of its unimpaired surplus
13 fund.

14 “(b) Any national banking association may make real
15 estate loans secured by liens upon forest tracts which are
16 properly managed in all respects. Such loans shall be in the
17 form of an obligation or obligations secured by mortgage,
18 trust deed, or other such instrument; and any national bank-
19 ing association may purchase or sell any obligation so se-
20 cured in whole or in part. The amount of any such loan,
21 when added to the amount unpaid upon prior mortgages,
22 liens, and encumbrances, if any, shall not exceed $66\frac{2}{3}$ per
23 centum of the appraised fair market value of the growing
24 timber, lands, and improvements thereon offered as security
25 and the loan shall be made upon such terms and conditions

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1 as to assure that at no time shall the loan balance, when
2 added to the amount unpaid upon prior mortgages, liens, and
3 encumbrances, if any, exceed $66\frac{2}{3}$ per centum of the original
4 appraised total value of the property then remaining. No
5 such loan shall be made for a longer term than three years;
6 except that any such loan may be made for a term not longer
7 than fifteen years if the loan is secured by an amortized
8 mortgage, deed of trust, or other such instrument under
9 the terms of which the installment payments are sufficient
10 to amortize the principal of the loan within a period of not
11 more than fifteen years and at a rate of at least $6\frac{2}{3}$ per
12 centum per annum. All such loans secured by liens upon
13 forest tracts shall be included in the permissible aggregate
14 of all real estate loans and, when secured by other than first
15 liens, in the permissible aggregate of all real estate loans
16 secured by other than first liens, prescribed in subsection
17 (a), but no national banking association shall make forest-
18 tract loans in an aggregate sum in excess of 50 per centum
19 of its capital stock paid in and unimpaired plus 50 per
20 centum of its unimpaired surplus fund.

21 “(c) Loans made to finance the construction of a build-
22 ing or buildings and having maturities of not to exceed sixty
23 months where there is a valid and binding agreement entered
24 into by a financially responsible lender or other party to
25 advance the full amount of the bank’s loan upon comple-

tion of the building or buildings, and loans made to finance the construction of residential or farm buildings and having maturities of not to exceed sixty months, may be considered as real estate loans if the loans qualify under this section, or such loans may be classed as commercial loans whether or not secured by a mortgage or similar lien on the real estate upon which the building or buildings are being constructed at the option of each national banking association that may have an interest in such loans: *Provided*, That no national banking association shall invest in, or be liable on, any such loans classed as commercial loans under this subsection in an aggregate amount in excess of 100 per centum of its actually paid-in and unimpaired capital plus 100 per centum of its unimpaired surplus fund.

“(d) Notes representing loans made under this section to finance the construction of residential or farm buildings and having maturities of not to exceed nine months shall be eligible for discount as commercial paper within the terms of the second paragraph of section 13 of this Act if accompanied by a valid and binding agreement to advance the full amount of the loan upon the completion of the building entered into by an individual, partnership, association, or corporation acceptable to the discounting bank.

“(e) Loans made to any borrower (i) where the association looks for repayment by relying primarily on the

1 borrower's general credit standing and forecast of income,
2 with or without other security, or (ii) secured by an assign-
3 ment of rents under a lease, and where, in either case de-
4 scribed in clause (i) or (ii) above, the association wishes
5 to take a mortgage, deed of trust, or other instrument upon
6 real estate (whether or not constituting a first lien) as a pre-
7 caution against contingencies, and loans in which the Small
8 Business Administration cooperates through agreements to
9 participate on an immediate or deferred or guaranteed basis
10 under the Small Business Act shall not be considered as real
11 estate loans within the meaning of this section but shall be
12 classed as commercial loans.

13 “(f) Any national banking association may make loans
14 upon the security of real estate that do not comply with the
15 limitations and restrictions in this section, if the total unpaid
16 amount loaned, exclusive of loans which subsequently com-
17 ply with such limitations and restrictions, does not exceed 10
18 per centum of the amount that a national banking association
19 may invest in real estate loans. The total unpaid amount so
20 loaned shall be included in the aggregate sum that such as-
21 sociation may invest in real estate loans.

22 “(g) Loans made pursuant to this section shall be sub-
23 ject to such conditions and limitations as the Comptroller
24 of the Currency may prescribe by rule or regulation.”

25 SEC. 3. The last sentence of section 10 (b) of the Fed-
26 eral Reserve Act (12 U.S.C. 347b) is repealed.

93^d CONGRESS
1st Session

S. 2179

IN THE SENATE OF THE UNITED STATES

JULY 13, 1973

Mr. WILLIAMS introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To establish a demonstration program to provide direct financing of housing for the elderly under section 236 of the National Housing Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 STATEMENT OF PURPOSE

4 SECTION 1. It is the purpose of this Act to establish a
5 demonstration program to provide direct loans from the
6 Federal Government for the acquisition of land and construc-
7 tion thereon of low- and moderate-income housing for the
8 elderly and handicapped at minimum cost to the United
9 States.

II

1 ESTABLISHMENT OF FUND

2 SEC. 2. (a) There is established in the Treasury of the
3 United States a trust fund to be known as the National Elder-
4 ly Housing Loan Fund (hereinafter in this section referred
5 to as the “fund”). The fund shall consist of—

6 (1) amounts repaid by mortgagors as principal and
7 interest on loans from the fund;

8 (2) proceeds credited to the fund under subsection
9 (c);

10 (3) payments authorized under section 236 (i) (4)
11 of the National Housing Act; and

12 (4) receipts from any other source.

13 (b) Amounts in the fund shall be available to the Secre-
14 tary of Housing and Urban Development (hereafter re-
15 ferred to as the “Secretary”) for the purpose of making di-
16 rect mortgage loans to any limited profit or nonprofit sponsor
17 or public agency approved by the Secretary for the provision
18 or projects designed primarily for occupancy by elderly or
19 handicapped families upon the same terms and conditions that
20 are applicable to private mortgages under section 236 (j) of
21 the National Housing Act. A loan made under this section
22 shall bear interest at a rate determined by the Secretary to be
23 equal to the effective rate of interest the borrower would pay
24 if the mortgage loan were subject to section 236 of the Na-

1 tional Housing Act and if interest reduction payments com-
2 puted under subsection (c) of such section were being made
3 with respect to such loan.

4 (c) To carry out the purposes of this section, the Secre-
5 tary is authorized to issue to the Secretary of the Treasury
6 notes or other obligations in an aggregate amount of not to
7 exceed \$50,000,000 in such forms and denominations, bear-
8 ing such maturities, and subject to such terms and conditions
9 as may be prescribed by the Secretary of the Treasury. Such
10 notes or other obligations shall bear interest at a rate deter-
11 mined by the Secretary of the Treasury, taking into consid-
12 eration the current average market yield on outstanding
13 marketable obligations of the United States of comparable
14 maturities during the month preceding the issuance of the
15 notes or other obligations. The Secretary of the Treasury is
16 authorized and directed to purchase any notes and other obli-
17 gations issued hereunder and for that purpose he is author-
18 ized to use as a public debt transaction the proceeds from the
19 sale of any securities issued under the Second Liberty Bond
20 Act, and the purposes for which securities may be issued
21 under that Act are extended to include any purchase of such
22 notes and obligations. The Secretary of the Treasury may at
23 any time sell any of the notes or other obligations acquired by
24 him under this subsection. All redemptions, purchases, and

1 sales by the Secretary of the Treasury of such notes or other
2 obligations shall be treated as public debt transactions of the
3 United States.

4 (d) The receipts and disbursements of the fund shall
5 not be included in the total of the Budget of the United States
6 Government and shall be exempt from any limitation on
7 annual expenditure or net lending.

8 (e) To the maximum extent practicable, the Secretary
9 shall use the services and facilities of the private mortgage
10 industry in originating and servicing mortgage loans made
11 under this section.

12 CONFORMING AMENDMENT

13 SEC. 3. Section 236 (i) of the National Housing Act is
14 amended by adding at the end thereof the following new
15 paragraph:

16 “(4) Of the sums appropriated under this subsection,
17 not more than \$5,000,000 shall be available in any fiscal
18 year for payment to the National Elderly Housing Loan
19 Fund. The amount of any payment to such fund with re-
20 spect to a project shall be determined as the difference be-
21 tween (A) the borrowing costs sustained by such fund in
22 financing the project, and (B) amounts actually received by
23 the fund as payments of principal and interest from the spon-
24 sor of such project.”.

5

LABOR STANDARDS

SEC. 4. All laborers and mechanics employed by contractors or subcontractors on projects which are undertaken by approved sponsors under this Act shall be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5). The Secretary shall not make any loan under this Act for any project without first obtaining adequate assurance that these labor standards will be maintained on the construction work; except that compliance with such standards may be waived by the Secretary in cases or classes of cases where laborers or mechanics, not otherwise employed at any time on the project, voluntarily donate their services without compensation for the purpose of lowering the costs of construction and the Secretary determines that any amounts thereby saved are fully credited to the sponsor undertaking the project. The Secretary of Labor shall have, with respect to the labor standards specified in this section, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267; 5 U.S.C. 133z-15), and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c).

IN THE SENATE OF THE UNITED STATES

Mr. WILLIAMS introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

To provide for increased security and protection for certain
federally related housing projects.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SHORT TITLE

4 SECTION 1. This Act may be cited as the "Housing
5 Security Act of 1973".

6 ESTABLISHMENT OF OFFICE OF SECURITY

7 SEC. 2. (a) There is established in the Department of
8 Housing and Urban Development an Office of Security which
9 shall be headed by the Assistant Secretary for Housing
10 Management.

11 (b) The Office of Security shall—

2

1 (1) make grants and enter into contracts in accord-
2 ance with section 3;

3 (2) serve as a clearinghouse for information re-
4 lating to the physical security of federally related housing
5 projects and to Federal assistance for improved security
6 of such projects; and

7 (3) cooperate and coordinate with the Law En-
8 forcement Assistance Administration in developing im-
9 proved methods for providing housing security.

10 GRANTS AND CONTRACTS

11 SEC. 3. The Secretary, acting through the Office of Secu-
12 rity, is authorized to make grants and enter into contracts
13 with sponsors of federally related multifamily housing proj-
14 ects in order to finance—

15 (1) the planning and development of a security
16 program for the project;

17 (2) capital improvements, such as design modifica-
18 tion or remodeling or the installation of electronic secu-
19 rity systems, improved lighting in common areas, and
20 hardware, to improve the security of the project;

21 (3) the maintenance and equipment of a security
22 force for the project, including salaries and benefits of
23 security personnel and training programs, uniforms,
24 weapons, and other equipment for such personnel; and

1 (4) research and technical assistance relating to
2 project security.

3 As used in this section the term "sponsor" includes a mort-
4 gagee or sponsor of a multifamily housing project under a
5 mortgage insured under any provision of the National Hous-
6 ing Act and a public housing agency operating a project
7 under the United States Housing Act of 1937.

8 AUTHORIZATION

9 SEC. 4. There are authorized to be appropriated such
10 sums as may be necessary to carry out the provision of this
11 Act.

IN THE SENATE OF THE UNITED STATES

Mr. WILLIAMS introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

To amend the National Housing Act to provide further assistance to public and private nonprofit corporations for the conversion of existing single family housing for occupancy by elderly persons of low or moderate income.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the “Intermediate Housing
4 for the Elderly and Handicapped Act”.

5 SEC. 2. Title II of the National Housing Act is amended
6 by adding at the end thereof the following new section:

7 "LOW- AND MODERATE-INCOME HOUSING FOR THE ELDERLY

8 AND SUPPORTIVE SERVICES

9 “SEC. 244. (a) As used in this section—

10 “(1) The term ‘elderly family’ means any single person
11 who is sixty-two years of age or over and who is handicapped

II

2

1 and any married couple either of whom is sixty-two years of
2 ago or over, or handicapped. A person shall be considered
3 handicapped if such person is determined, pursuant to regu-
4 lations issued by the Secretary, to have a physical impair-
5 ment which (A) is expected to be of long-continued and
6 indefinite duration, (B) substantially impedes his ability to
7 live independently, and (C) is of such a nature that such
8 ability could be improved by more suitable housing conditions.

9 “(2) The term ‘sponsor’ means a nonprofit organization
10 or public agency which agrees to carry out a program which
11 meets the requirements of this section, and such term in-
12 cludes any such organization or agency which is financed
13 under a State or local program providing assistance through
14 loans, loan insurance, or tax abatements, and which is ap-
15 proved for receiving the benefits of this section.

16 “(3) The term ‘existing housing’ means single or double
17 family housing units which may be converted into multifamily
18 efficiency units through the addition of kitchen and bath-
19 room facilities.

20 “(4) The term ‘supportive services’ means any service
21 which enables an elderly person to continue to reside out-
22 side an institution, as determined by the Secretary. Such
23 term may include transportation, meals-on-wheels, home-
24 maker services, legal aid, and home health care.

25 “(5) The term ‘mortgage insurance premium’, as used

1 in this section in relation to a project financed by a loan
2 under a State or local program, means such fees and charges,
3 approved by the Secretary, as are payable by the mortgagor
4 to the State or local agency mortgagee to meet reserve re-
5 quirements and administrative expenses of such agency.

6 “(6) The terms ‘mortgage’, ‘mortgagee’, and ‘mortga-
7 gor’ have the same meaning as in section 201.

8 “(b) For the purpose of assisting sponsors in purchasing
9 existing housing, converting such housing into dwelling units
10 suitable for occupancy by elderly families, and reducing
11 rentals for elderly families of low and moderate income, the
12 Secretary is authorized to make and to contract to make
13 periodic interest reduction payments on behalf of the sponsor,
14 which shall be accomplished through payments to mortgagees
15 holding mortgages meeting the special requirements specified
16 in this section.

17 “(c) (1) Interest reduction payments with respect to a
18 project shall only be made during such time as the project is
19 operated as a rental project and is subject to a mortgage
20 which meets the requirements of and is insured under sub-
21 section (f) of this section, except that such payments may
22 be made where the mortgage has been assigned to the
23 Secretary.

24 “(2) The interest reduction payments to a mortgage by
25 the Secretary on behalf of a sponsor shall be in an amount

1 not exceeding the difference between the monthly payment
2 for principal, interest, and mortgage insurance premium
3 which the sponsor as a mortgagor is obliged to pay under
4 the mortgage and the monthly payment for principal and
5 interest such sponsor would be obligated to pay if the mort-
6 gage were to bear interest at the rate of 1 per centum per
7 annum.

8 “(3) The Secretary may include in the payment to the
9 mortgagee such amount, in addition to the amount computed
10 under subsection (c), as he deems appropriate to reimburse
11 the mortgagee for its expenses in handling the mortgage.

12 “(d) (1) As a condition for receiving the benefits of
13 interest reduction payments, the sponsor: (A) shall be pro-
14 viding through its own program and through working ar-
15 rangements with other community programs, a fully compre-
16 hensive system of supportive services for the elderly as de-
17 fined by the Secretary which may include such services as
18 counseling, homemaker service, transportation, meals-on-
19 wheels, information and referral, legal services, health clinic
20 services, and other such programs designed to help the older
21 person remain in independent living; and (B) shall operate
22 the project in accordance with such requirements with re-
23 spect to tenant eligibility and rents as the Secretary may
24 prescribe. Procedures shall be adopted by the Secretary for

5

1 review of tenant incomes at intervals of two years (or at
2 shorter intervals where the Secretary deems it desirable).

3 “(2) For each dwelling unit there shall be established
4 with the approval of the Secretary (A) a basic rental charge
5 determined on the basis of operating the project with pay-
6 ments of principal and interest due under a mortgage bear-
7 ing interest at the rate of 1 per centum per annum; and (B)
8 a fair market rental charge determined on the basis of operat-
9 ing the project with payments of principal, interest, and
10 mortgage insurance premium which the mortgagor is obli-
11 gated to pay under the mortgage covering the project. The
12 rental for each dwelling unit shall be at the basic rental
13 charge or such greater amount, not exceeding the fair market
14 rental charge, as represents 25 per centum of the tenant's
15 income.

16 “(3) The sponsor shall, as required by the Secretary,
17 accumulate, safeguard, and periodically pay to the Secretary
18 all rental charges collected in excess of the basic rental
19 charges. Such excess charges shall be deposited by the Secre-
20 tary in a fund which may be used by him as a revolving fund
21 for the purpose of making interest reduction payments with
22 respect to any rental housing project receiving assistance
23 under this section, subject to limits approved in appropriation
24 Acts pursuant to subsection (e). Moneys in such fund not
25 needed for current operations may be invested in bonds or

6

1 other obligations of the United States or in bonds or other
2 obligations guaranteed as to principal and interest by the
3 United States or any agency of the United States, except that
4 such moneys shall to the maximum extent feasible be invested
5 in such bonds or other obligations the proceeds of which will
6 be used to directly support the residential mortgage market.

7 “(4) In addition to establishing the requirements speci-
8 fied in paragraph (1), the Secretary is authorized to make
9 such rules and regulations, to enter into such agreements, and
10 to adopt such procedures as he may deem necessary or de-
11 sirable to carry out the provisions of this section.

12 “(e) (1) There are authorized to be appropriated such
13 sums as may be necessary to carry out the provisions of this
14 section, including such sums as may be necessary to make
15 interest reduction payments under contracts entered into by
16 the Secretary under this section. The aggregate amount of
17 outstanding contracts to make such payments shall not ex-
18 ceed amounts approved in appropriation Acts, and payments
19 pursuant to such contracts shall not exceed \$

20 per annum prior to July 1, 1973, which maximum dollar
21 amount shall be increased by \$ on July 1, 1973.

22 “(2) Not more than 20 per centum of the total amount
23 of interest reduction payments authorized to be contracted
24 to be made pursuant to appropriation Acts shall be contracted
25 to be made with respect to families, occupying rental hous-

1 ing projects assisted under this section, whose incomes at
2 the time of the initial renting of the projects exceed 135
3 per centum of the maximum income limits which can be
4 established in the area, pursuant to the limitations prescribed
5 in sections 2 (2) and 15 (7) (b) (ii) of the United States
6 Housing Act of 1937, for initial occupancy in public hous-
7 ing dwellings, but the income of such families at the time of
8 the initial renting of the projects shall in no case exceed
9 90 per centum of the limits prescribed by the Secretary
10 for occupants of projects financed with mortgages insured
11 under section 221 (d) (3) which bear interest at the below-
12 market interest rate prescribed in the proviso of section 221
13 (d) (5). The limitations prescribed in this paragraph shall
14 be administered by the Secretary so as to accord a preference
15 to those families whose incomes are within the lowest prac-
16 ticable limits for obtaining rental accommodations in projects
17 assisted under this section. The Secretary shall report semi-
18 annually to the Committee on Banking and Currency of the
19 House of Representatives and to the Committee on Banking,
20 Housing and Urban Affairs of the Senate with respect to
21 the income levels of families living in projects assisted under
22 this section.

23 “(f) (1) The Secretary is authorized, upon application
24 by the mortgagee, to insure a mortgage (including advances
25 on such mortgage during construction) which meets the re-

1 requirements of this section. Commitments for the insurance
2 of such mortgages may be issued by the Secretary prior to
3 the date of their execution or disbursement thereon, upon
4 such terms and conditions as he may prescribe.

5 “(2) To be eligible for insurance under this subsection,
6 a mortgage shall meet the requirements specified in subsec-
7 tions (d) (1) and (d) (3) of section 221, except as such
8 requirements are modified by this section.

9 “(3) A mortgage to be insured under this subsection
10 shall—

11 “(A) bear interest (exclusive of premium charges
12 for insurance and service charges, if any) at not to
13 exceed such per centum per annum on the amount of
14 the principal obligation outstanding at any time, as the
15 Secretary finds necessary to meet the mortgage market;
16 and

17 “(B) provide for complete amortization by periodic
18 payments within such term as the Secretary may pre-
19 scribe.

20 “(4) The property or project shall—

21 “(A) comply with such standards and conditions
22 as the Secretary may prescribe to establish the accepta-
23 bility of the property for mortgage insurance and may
24 include such nondwelling facilities as the Secretary

1 deems adequate and appropriate to serve the occupants
2 and the surrounding neighborhood;

3 “ (B) include three or more dwelling units; and

4 “ (C) be designed primarily for use as a rental proj-
5 ect to be occupied by low- or moderate-income elderly
6 families.

7 “ (g) The Secretary shall from time to time allocate and
8 transfer to the Secretary of Agriculture, for use (in accord-
9 ance with the terms and conditions of this section) in rural
10 areas and small towns, a reasonable portion of the total
11 authority to contract to make periodic interest reduction
12 payments as approved in appropriation Acts under sub-
13 section (e) .

14 “ (h) The Secretary is authorized to enter into agree-
15 ments with any State or agency thereof under which such
16 State or agency thereof contracts to make interest reduction
17 payments subject to all the terms and conditions specified in
18 this section and in rules, regulations, and procedures adopted
19 by the Secretary under this section, with respect to all or a
20 part of a project covered by a mortgage insured under this
21 section. Any funds provided by a State or agency thereof for
22 the purpose of making interest reduction payments shall be
23 administered, disbursed, and accounted for by the Secretary
24 in accordance with the agreements entered into by the Sec-

1 retary with the State or agency thereof and for such fees as
2 shall be specified therein. Before entering into any agree-
3 ments pursuant to this subsection the Secretary shall require
4 assurances satisfactory to him that the State or agency thereof
5 is able to provide sufficient funds for the making of interest
6 reduction payments for the full period specified in the interest
7 reduction contract.”.

93d CONGRESS
1st Session

S. 2182

IN THE SENATE OF THE UNITED STATES

JULY 14, 1973

Mr. ROBERT C. BYRD (for Mr. SPARKMAN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To consolidate, simplify, and improve laws relative to housing and housing assistance, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Housing Act of 1973".

4 **Chapter 1—MORTGAGE CREDIT ASSISTANCE**

5 CONSOLIDATION AND REVISION OF PROVISIONS OF LAW

6 RELATING TO MORTGAGE INSURANCE

7 SEC. 101. The provisions of this section which follow
8 shall be effective as provided in section 102 and may be
9 cited as the "Revised National Housing Act".

II

1 TITLE I—GENERAL AUTHORITY

2 DEFINITIONS

3 SECTION 1. As used in this Act—

4 (a) The term “first mortgage” means such classes of
5 first liens as are commonly given to secure advances on, or
6 the unpaid purchase price of, real estate, under the laws of
7 the State in which the real estate is located, together with
8 the credit instruments, if any, secured thereby.

9 (b) The term “mortgage” means a first mortgage on
10 real estate in fee simple, or on a leasehold (1) under a
11 lease not less than ninety-nine years which is renewable or
12 (2) under a lease having a period of not less than fifty years
13 to run from the date the mortgage was executed.

14 (c) The term “mortgage bond” means a bond, note,
15 debenture, or other obligation which is secured by a
16 mortgage.

17 (d) The term “mortgagee” includes the original lender
18 under a mortgage, the holder of a mortgage bond, and any
19 successor or assign approved by the Secretary.

20 (e) The term “mortgagor” includes the original bor-
21 rower under a mortgage, the issuer of a mortgage bond, and
22 any successor or assign.

23 (f) The term “home mortgage” means a mortgage in-
24 volving a one- to four-family residence or a one-family unit
25 in a condominium, including a mortgage to cover a dwelling

1 located outside built-up urban areas and a dwelling not de-
2 signed for year-round occupancy.

3 (g) The term "project mortgage" means a mortgage
4 involving multifamily housing, a land development project,
5 or a health facility.

6 (h) The term "maturity date" means the date on which
7 the mortgage indebtedness would be extinguished if paid in
8 accordance with the payments provided for in the mortgage.

9 (i) The term "condominium" means a multiunit hous-
10 ing project which is subject to a plan of family unit owner-
11 ship acceptable to the Secretary under which each dwelling
12 unit is individually owned and each such owner holds an
13 undivided interest in the common areas and facilities which
14 serve the project.

15 (j) The term "cooperative" means any nonprofit cor-
16 poration or nonprofit housing trust which has consumer-
17 oriented sponsorship with no identity of interest with the
18 builder, which is organized for the purpose of construction,
19 rehabilitation, or acquisition of housing and related facilities
20 which meet one of the following requirements:

21 (1) The permanent occupancy of the dwelling units
22 will be restricted to members of the cooperative; or

23 (2) The individual dwelling units, upon completion
24 of the construction or rehabilitation of the project, are
25 to be sold to purchasers eligible for mortgage insurance

1 or assistance under the provisions of section 401 or 402
2 of this Act, with the cooperative continuing to provide
3 community facilities for the owners of such dwelling
4 units.

5 (k) The term “experimental property” means property
6 which involves the utilization and testing of advanced tech-
7 nology in property design, materials, or construction, or ex-
8 perimental property standards for neighborhood design
9 which will provide data or experience which the Secretary
10 deems to be significant in reducing building costs or improv-
11 ing building standards, quality, livability, or durability, or
12 improving neighborhood design.

13 (l) The term “advances” means insured mortgage
14 or guaranteed mortgage bond proceeds advanced during con-
15 struction or rehabilitation. In addition to being made for the
16 purpose of financing improvements to the property and the
17 purchase of materials and building components delivered to
18 the property, such insured proceeds may, with the approval
19 of the Secretary and with such security as the Secretary
20 requires, be advanced for the purpose of providing funds to
21 cover the cost of building components where such compo-
22 nents have been assembled and specifically identified for
23 incorporation into the mortgaged property, but which are
24 located at a site other than the mortgaged property.

25 (m) The term “State” includes the several States and

1 Puerto Rico, the District of Columbia, Guam, and the Virgin
2 Islands. Such term may also include American Samoa, the
3 Canal Zone, Midway Island, and the Trust Territory of the
4 Pacific Islands where the Secretary determines the use
5 of particular mortgage insurance programs is feasible and
6 desirable.

7 (n) The term "Secretary" means the Secretary of
8 Housing and Urban Development.

9 (o) The term "neighborhood preservation area" means
10 an area determined by the Secretary to be threatened by
11 housing deterioration or abandonment but which is reason-
12 ably stable and contains sufficient public facilities and serv-
13 ices to be reasonably capable of supporting long-term values
14 or which is to be improved through community programs
15 of neighborhood preservation or rehabilitation.

16 (p) The term "sound condition" means a condition that
17 meets all State and local requirements relating to housing
18 condition, exclusive of building code requirements.

19 GENERAL INSURANCE AUTHORITY

20 SEC. 2. (a) To be eligible for insurance under this Act
21 a mortgage or loan shall have been made by, and be held
22 by, a mortgagee or lender approved by the Secretary as
23 responsible and able to service the mortgage or loan properly.

24 (b) The Secretary is authorized, upon application by
25 the mortgagee or lender, to insure mortgages and loans, upon

1 such terms and conditions as he may prescribe, in accordance
2 with the provisions of this Act, and to make commitments
3 for the insuring of such mortgages and loans prior to the
4 date of their execution or disbursement thereon. At any time
5 prior to final endorsement for insurance, the Secretary may
6 amend, extend, or increase the amount of any commitment,
7 but the mortgage or loan as finally endorsed for insurance
8 must be eligible for insurance under the provisions of this
9 Act in effect at the time of such final endorsement.

10 (c) To be eligible for insurance under this Act, the
11 mortgage transaction shall be determined by the Secretary
12 to be an insurable risk, except that the Secretary may
13 accept for insurance as a special risk a mortgage transaction
14 involving assistance payments, experimental property, prop-
15 erty located in an older and declining area where there is a
16 reasonable prospect for revitalization, or single-family hous-
17 ing for employees of research and development installations
18 where it is established to the satisfaction of the Secretary
19 that there is a special need for such housing.

20 MORTGAGE BOND GUARANTEES AND INTEREST SUBSIDIES

21 SEC. 2A. (a) (1) The Secretary is authorized to guar-
22 antee, and enter into commitments to guarantee, the mort-
23 gage bonds issued by or on behalf of local housing agencies
24 or other State or local public agencies approved by the Sec-
25 retary for the purpose of financing the acquisition of land

1 and the construction thereon of multifamily housing which is
2 approved by the Secretary and which meets the require-
3 ments of section 502 with respect to maximum mortgage
4 amounts and tenant eligibility and rents. The Secretary may
5 make such guarantees and enter into such commitments upon
6 such terms and conditions as he may prescribe consistent
7 with the limitations and conditions contained in subsection
8 (c), except that no bond shall be guaranteed under this sec-
9 tion if the income thereon is exempt from Federal taxation.

10 (2) The Secretary is authorized to make grants to any
11 local housing agency or other State or local agency the bonds
12 of which are guaranteed under this section in amounts esti-
13 mated by him not to exceed $33\frac{1}{3}$ per centum of the interest
14 paid on such obligations. The aggregate amount of such
15 grants may not exceed \$100,000,000 prior to July 1, 1975.
16 There is authorized to be appropriated the sum of \$100,000,-
17 000 for the purpose of making grants under this paragraph.

18 (b) The full faith and credit of the United States is
19 pledged to the payment of all guarantees made under this
20 section with respect to principal and interest. Any such
21 guarantee made by the Secretary shall be conclusive evidence
22 of the eligibility of the bonds for such guarantee, and the
23 validity of any guarantee so made shall be incontestable in
24 the hands of a holder of the guaranteed bond.

25 (c) (1) No bond shall be guaranteed under this sec-

tion unless the Secretary has determined that the project financed thereby is acceptable as a special risk to the United States, taking into consideration (A) the financial and security interests of the United States, including the manner in which the sponsor proposes to finance land acquisition and construction, and (B) the public purposes of this section.

(2) The Secretary shall take such steps as he considers reasonable to assure that bonds guaranteed under this section will—

(A) be issued to investors approved by, or meeting requirements prescribed by, the Secretary, or, if an offering to the public is contemplated, be underwritten upon terms and conditions approved by the Secretary;

(B) contain or be subject to repayment, maturity, and other provisions satisfactory to the Secretary; and

(C) contain or be subject to provisions with respect to the protection of the security interests of the United States, including any provisions deemed appropriate by the Secretary relating to subrogation, liens and releases of liens, payment of taxes, escrow or trusteeship requirements, or other matters.

(d) The Secretary is authorized to utilize the Special Risk Insurance Fund to provide for (1) the timely payment of any liabilities incurred as the result of guarantees under

1 this section; and (2) any other program expenditures, in-
2 cluding administrative and nonadministrative expenses. Such
3 fund shall be credited with (1) receipts from fees and
4 charges; (2) recoveries under security, subrogation, and
5 other rights; (3) repayments, interest income, and any
6 other receipts obtained in connection with guarantees made
7 under this section; and (4) such sums, which are hereby
8 authorized to be appropriated, as may be required for other
9 purposes under this section.

10 (e) Notwithstanding any other provision of law relat-
11 ing to the acquisition, handling, improvement, or disposal of
12 real and other property by the United States, the Secretary
13 shall have power, for the protection of the interests of the
14 fund, to pay out of such fund all expenses or charges in con-
15 nection with the acquisition, handling, improvement, or dis-
16 posal of any property, real or personal, acquired by him as
17 a result of recoveries under security, subrogation, or other
18 rights.

19 (f) The Secretary is authorized to establish and collect
20 fees for guarantees under this section, and may make such
21 charges in connection with guarantees as he considers rea-
22 sonable for the analysis of applications, appraisals, inspec-
23 tions, and other activities related to such assistance, except
24 that no guarantee fee may be required to be paid until such
25 time as the Secretary determines that such a payment may be

1 required without the benefit of assistance payments under
2 section 502.

3 (g) Nothing in this section shall be construed to exempt
4 any real property that may be acquired and held by the Sec-
5 retary as a result of the exercise of lien or subrogation rights
6 from real property taxation to the same extent, according
7 to its value, as other real property is taxed.

8 (h) In the performance of, and with respect to, the
9 functions, powers, and duties vested in him by this section,
10 the Secretary, in addition to any authority otherwise vested
11 in him, shall—

12 (1) have the functions, powers, and duties (includ-
13 ing the authority to issue rules and regulations) set forth
14 in section 402, except subsections (c) (2), (c) (4),
15 (d), and (f) of the Housing Act of 1950;

16 (2) have the power, notwithstanding any other
17 provision of law, in connection with any assistance under
18 this section, whether before or after any default, to pro-
19 vide by contract for the extinguishment upon default of
20 any redemption, equitable, legal, or other right, title, or
21 interest of the local housing agency or other State or
22 local public agency in any mortgage, deed, trust, or other
23 instrument held by or on behalf of the Secretary for the
24 protection of the security interests of the United States;
25 and

1 (3) have the power to foreclose on any property
2 or commence any action to protect or enforce any right
3 conferred upon him by law, contract, or other agree-
4 ment, and bid for and purchase at any foreclosure or
5 other sale any property in connection with which he has
6 provided assistance pursuant to this section. In the event
7 of any such acquisition, the Secretary may, notwith-
8 standing any other provision of law relating to the acqui-
9 sition, handling, or disposal of real property by the
10 United States, complete, administer, remodel and con-
11 vert, dispose of, lease, and otherwise deal with, such
12 property. Notwithstanding any other provision of law,
13 the Secretary shall also have power to pursue to final
14 collection by way of compromise or otherwise all claims
15 acquired by him in connection with any security, subro-
16 gation, or other rights obtained by him in administering
17 this section.

18 (i) (1) The first paragraph of section 24 of the Federal
19 Reserve Act is amended by inserting the following before
20 the period at the end of the fourth sentence thereof: "or un-
21 der section 2A of the Revised National Housing Act".

22 (2) The twelfth paragraph of section 5 (c) of the Home-
23 owners' Loan Act of 1933 is amended by adding in the last
24 sentence immediately after the words "or under part B of
25 the Urban Growth and New Community Development Act

1 of 1970" the following: "or under section 2A of the Revised
2 National Housing Act".

3 (j) The interest paid on and received by the purchaser
4 of any bond guaranteed under this section (or his successor
5 in interest) shall be included in gross income for the pur-
6 poses of chapter 1 of the Internal Revenue Code of 1954.

7 FLEXIBLE MORTGAGE AMOUNTS

8 SEC. 3. (a) The Secretary shall not insure a mortgage
9 or guarantee a mortgage bond covering property in any
10 area which exceeds, for that part of the property attributable
11 to dwelling use, the appropriate prototype cost for the area
12 (1) by more than 20 per centum in the case of a mortgage
13 insured under section 402 or section 502 or a mortgage
14 bond guaranteed under section 2A, or (2) by more than
15 100 per centum, or such lower per centum in any area as
16 the Secretary determines to be appropriate to prevent the
17 diversion of mortgage credit from moderate cost housing,
18 in the case of a mortgage insured under section 401 or sec-
19 tion 501.

20 (b) The Secretary shall determine prototype costs at
21 least annually on the basis of (1) his estimate of the con-
22 struction costs of new dwelling units (including units de-
23 signed for elderly and handicapped families) of various types
24 and sizes and in the area suitable for occupancy by persons
25 assisted under sections 402 and 502, and (2) his estimate of

1 reasonable allowances for the cost of land and site improve-
2 ments. In making his determination the Secretary shall take
3 into account (A) the extra durability required for economi-
4 cal maintenance of such housing, (B) the provision of amen-
5 ities designed to guarantee a safe and healthy family life and
6 neighborhood environment, (C) the application of good de-
7 sign as an essential component of such housing and mainte-
8 nance of quality in architecture to reflect the standards of the
9 neighborhood and community, (D) the effectiveness of exist-
10 ing mortgage limits in the area, and (E) the advice and
11 recommendations of local housing producers. The prototype
12 costs for any area shall become effective upon the date of
13 publication in the Federal Register.

14 (c) As used in this section the term "construction costs"
15 means those cost items which are normally reflected in the
16 amount of a home mortgage or multifamily mortgage insured
17 under section 402 or section 502, or in the amount of a
18 mortgage bond guaranteed under section 2A, except the costs
19 of land and site improvements.

20 INTEREST RATES

21 SEC. 4. The Secretary shall from time to time prescribe
22 the maximum interest rates which mortgages, loans, or mort-
23 gage bonds eligible for insurance or guarantees under this Act
24 may bear. The rates prescribed shall be those rates which

1 the Secretary finds necessary to meet the mortgage or loan
2 market or the bond market.

3 WATER AND SEWER FACILITIES

4 SEC. 5. No mortgage shall be approved for insurance
5 under this Act and no mortgage bond shall be approved for
6 a guarantee under this Act if the mortgaged property involves
7 new construction and includes housing which is not served
8 by a public or adequate private community water and sewer-
9 age system, unless the property is situated in an area where
10 the establishment of such a system is determined by the
11 Secretary not to be economically feasible and where the
12 Secretary determines that the absence of such a system will
13 not create a significant environmental hazard. The economic
14 feasibility of establishing such public or adequate private
15 community water and sewerage systems shall be determined
16 without regard to whether such establishment is authorized
17 by law or is subject to approval by one or more local gov-
18 ernments or public bodies.

19 APPROVAL OF TECHNICALLY SUITABLE MATERIALS

20 SEC. 6. The Secretary shall adopt a uniform procedure
21 for the acceptance of materials and products to be used in
22 structures approved for mortgages, loans, or mortgage bonds
23 insured or guaranteed under this Act. Under such procedure
24 any material or product which the Secretary finds is techni-
25 cally suitable for the use proposed shall be accepted. Accept-

1 ance of a material or product as technically suitable shall not
2 be deemed to restrict the discretion of the Secretary to deter-
3 mine that a structure, with respect to which a mortgage is
4 executed, is an insurable or special risk.

5 INSURANCE CONTRACT INCONTESTABILITY

6 SEC. 7. Any contract of insurance executed by the Sec-
7 retary under the provisions of titles IV and V shall be con-
8 clusive evidence of the eligibility of the loan or mortgage
9 for insurance. The validity of any contract of insurance so
10 executed shall be incontestable in the lands of an approved
11 financial institution or approved mortgagee from the date
12 of the execution of such contract, except for fraud or mis-
13 representation on the part of such financial institution or
14 mortgagee.

15 ADMINISTRATION

16 SEC. 8. In carrying out the provisions of this Act, the
17 Secretary is authorized to (1) make such expenditures as
18 may be necessary, (2) sue and be sued, (3) make such
19 rules and regulations as may be necessary, and (4) pro-
20 vide or obtain technical assistance in the planning for and
21 construction of projects to be covered by mortgages insured
22 under this Act.

23 ALLOCATION OF HOUSING ASSISTANCE APPROPRIATIONS

24 SEC. 9. (a) The sums appropriated under section 402
25 (g) (1) for homeownership assistance payments and under

1 section 502 (h) (1) for multifamily rental assistance pay-
2 ments, respectively, shall be allocated by the Secretary as
3 follows:

4 (1) Sixty per centum of each such sum shall be al-
5 located by the Secretary to metropolitan areas.

6 (A) For each metropolitan area, the Secretary
7 shall allocate an amount which bears the same ratio
8 to the allocation for all metropolitan areas as the
9 average of the ratios between—

10 (i) the population of the metropolitan area
11 and that of all metropolitan areas;

12 (ii) the extent of poverty in the metropoli-
13 tan area and that in all metropolitan areas; and

14 (iii) the extent of housing overcrowding in
15 the metropolitan area and that in all metropoli-
16 tan areas.

17 (B) From the amount allocated to each metro-
18 politan area, the Secretary shall determine for each
19 metropolitan city therein an amount for that city
20 which shall equal an amount which bears the same
21 ratio to the allocation for the metropolitan area as
22 the average of the ratios between—

23 (i) the population of the metropolitan city
24 and that of the metropolitan area;

25 (ii) the extent of poverty in the metro-

1 politan city and that in the metropolitan area;

2 and

3 (iii) the extent of housing overcrowding in
4 the metropolitan city and that in the metropoli-
5 tan area.

6 In determining the average of ratios under subparagraph
7 (A) or (B) of this paragraph, the ratio involving the
8 extent of poverty shall be counted twice.

9 (C) From the amount allocated for each metro-
10 politan city, the Secretary shall allocate—

11 (i) one-half for that city or its designated
12 public agency for use in implementing its hous-
13 ing plan or, in the case of a city which has a
14 plan under preparation, in accordance with such
15 terms and conditions as the Secretary may pre-
16 scribe; and

17 (ii) one-half for projects undertaken by
18 sponsors in general conformity with and in sup-
19 port of the city's housing plan or, in the case of
20 a city which has a plan under preparation, in
21 accordance with such terms and conditions as
22 the Secretary may prescribe.

23 (2) Thirty per centum of each sum shall be allo-
24 cated by the Secretary for—

1 (A) project not located in metropolitan areas;
2 and

3 (B) housing research and demonstration
4 projects.

5 (3) Ten per centum of each such sum shall be allo-
6 cated by the Secretary for State and regional bodies for
7 use primarily in nonmetropolitan areas.

8 (4) The remainder of the allocation for each metro-
9 politan area shall be allocated by the Secretary to units
10 of general local government within that metropolitan
11 area, taking into consideration such factors as popula-
12 tion, extent of poverty, extent of overcrowding, and
13 other social and fiscal conditions prevailing in the metro-
14 politan area. Any portion of the remainder of the alloca-
15 tion for each metropolitan area unused at the end of the
16 fiscal year for which it was allocated shall be available
17 for use within metropolitan areas.

18 (b) None of the funds allocated under this section shall
19 be made available to any State or regional body or unit of
20 general local government unless—

21 (1) the Secretary has received and approved a
22 three-year housing plan submitted by that body or unit;
23 or

24 (2) the Secretary has determined, on the basis of

1 reasonable assurances furnished by that body or unit,
2 that such a plan is under preparation.

3 (c) As used in this section—

4 (1) The term “unit of general local government”
5 means any city, municipality, county, town, township,
6 parish, village, or other general purpose political sub-
7 division of a State, a consortium of such political sub-
8 divisions recognized by the Secretary, and the District
9 of Columbia.

10 (2) The term “metropolitan area” means a standard
11 metropolitan statistical area, as established by the Office
12 of Management and Budget.

13 (3) The term “metropolitan city” means a city
14 within a metropolitan area which is the central city of
15 such metropolitan area, as defined by the Office of Man-
16 agement and Budget, or which is a city having a
17 population of fifty thousand or more.

18 (4) The term “population” means the total resident
19 population based on data compiled by the Bureau of the
20 Census and referable to the same point or period in time.

21 (5) The term “extent of poverty” means the num-
22 ber of persons (or alternatively, the number of families
23 and unrelated individuals) whose incomes are below the
24 poverty level, as determined pursuant to criteria provided

1 by the Office of Management and Budget, and based on
2 data referable to the same point or period in time.

3 (6) The term "extent of housing overcrowding"
4 means the number of housing units with 1.01 or more
5 persons per room based on data compiled by the Bureau
6 of the Census and referable to the same point or period
7 in time.

8 ANNUAL REPORT

9 SEC. 10. The Secretary shall transmit to the Congress,
10 not later than March 31 of each year beginning in 1975, a
11 report containing his evaluation of the effectiveness of the
12 allocation of appropriations under section 9 and particularly
13 of the allocation under paragraph (1) (C) of subsection (a)
14 of such section.

15 TITLE II—INSURANCE FUNDS, PREMIUMS AND
16 CHARGES

17 INSURANCE FUNDS

18 SEC. 201. (a) The General Insurance Fund, created
19 pursuant to section 519 of the National Housing Act, shall
20 be used by the Secretary as a revolving fund for carrying out
21 both his obligations incurred pursuant to the National Hous-
22 ing Act and, except as otherwise provided in this section,
23 his obligations with respect to—

24 (1) property improvement, historic structure pres-
25 ervation, and mobile home loans under title III;

1 (2) home mortgages insured under section 401;

2 (3) project mortgages insured under sections 501,
3 503, and 505; and

4 (4) supplemental project loans insured under sec-
5 tion 504.

6 (b) The Special Risk Insurance Fund, created pursuant
7 to section 238 (b) of the National Housing Act, shall be
8 used by the Secretary as a revolving fund for carrying out
9 both his obligations incurred pursuant to the National Hous-
10 ing Act and his obligations with respect to—

11 (1) home mortgages insured under section 402;

12 (2) home mortgages insured under section 401
13 where the mortgage involves experimental property,
14 property in an older and declining area, or housing for
15 employees of research and development installations;

16 (3) project mortgages insured under section 502;

17 (4) project mortgages insured under sections 501
18 and 503 where the mortgage involves experimental
19 property or property in an older and declining area;

20 (5) supplemental project loans insured under sec-
21 tion 504, where the Special Risk Insurance Fund is
22 obligated for the insurance of the original project mort-
23 gage; and

24 (6) mortgage bonds guaranteed under section 2A.

25 (c) The Cooperative Management Housing Insurance

1 Fund, created pursuant to section 213 (k) of the National
2 Housing Act, shall be used by the Secretary as a revolving
3 fund for carrying out both his obligations incurred pursuant
4 to the National Housing Act and his obligations with respect
5 to—

6 (1) project mortgages insured under section 501
7 where the mortgagor is a cooperative; and

8 (2) supplemental project loans issued under sec-
9 tion 504, where the Cooperative Management Housing
10 Insurance Fund is obligated for the insurance of the
11 original project mortgage or where the original project
12 mortgage covering a cooperative housing project is
13 uninsured.

14 (d) All premiums, fees, charges, and other income re-
15 ceived by the Secretary in connection with the insurance of
16 mortgages or loans shall be credited to the fund obligated for
17 such insurance. All payments made pursuant to claims of
18 mortgages, cash adjustments, the principal of and interest
19 paid on debentures, expenses incurred in connection with
20 the acquisition and disposal of property, nonadministrative
21 and administrative expenses, and all other authorized ex-
22 penditures incurred pursuant to this Act and the National
23 Housing Act shall be paid out of the fund obligated for such
24 insurance.

25 (e) The Secretary is authorized to borrow from the

1 Treasury from time to time such amounts as the Secretary
2 shall determine are necessary to pay insurance claims in
3 cash, in lieu of issuing debentures. Notes or other obligations
4 issued by the Secretary for amounts borrowed under this
5 subsection shall bear interest at a rate determined by the
6 Secretary of the Treasury, taking into consideration the cur-
7 rent average market yield on outstanding marketable obliga-
8 tions of the United States with remaining periods of maturity
9 comparable to the average maturities of such notes or other
10 obligations.

11 (f) Moneys in an insurance fund not needed for current
12 operations of the fund shall be deposited with the Treasurer
13 of the United States to the credit of the fund or invested in
14 bonds or other obligations of, or in bonds or other obliga-
15 tions guaranteed by, the United States or any agency of the
16 United States. The Secretary, with the approval of the
17 Secretary of the Treasury, may purchase in the open market
18 debentures which are the obligation of the fund. Such pur-
19 chases shall be made at a price which will provide an in-
20 vestment yield of not less than the yield obtained from other
21 investments authorized by this subsection. Debentures so
22 purchased shall be canceled and not reissued.

23 (g) The Secretary is authorized to advance from one
24 insurance fund to another such amounts as he considers
25 necessary for the administration of the funds. Such advances

1 shall be repayable at such time and at such rate of in-
2 terest as the Secretary deems appropriate.

3 (h) There are authorized to be appropriated such sums
4 as may be needed from time to time to cover losses sustained
5 by the General Insurance Fund or the Special Risk In-
6 surance Fund.

7 INSURANCE PREMIUMS AND CHARGES

8 SEC. 202. (a) The Secretary is authorized to fix an
9 insurance premium for the insurance of mortgages and
10 loans under this Act. Insurance premiums for the insurance
11 of mortgages under this Act (except under section 505)
12 shall not exceed an amount equivalent to 1 per centum per
13 annum of the amount of the principal obligation of the
14 mortgage outstanding at any one time. The Secretary may
15 require the payment of the insurance premium on an advance
16 or a deferred basis, except that with respect to any mortgage
17 or loan insured under title V or with respect to any loan
18 under title III, such insurance premium shall be payable
19 annually in advance by the mortgagee or lender. Notwith-
20 standing the foregoing, no mortgage insurance premium may
21 be required from a mortgagor assisted under section 402
22 or 502 until the Secretary determines that the mortgagor
23 can afford to pay such a premium without the benefit of
24 assistance payments.

25 (b) In the event that the principal obligation of any

1 mortgage or loan insured under title IV or title V is paid in
2 full prior to the maturity date, the Secretary is authorized
3 in his discretion to require the payment by the mortgagee or
4 the lender of an adjusted premium charge in such amount as
5 the Secretary determines to be equitable, but not in excess
6 of the aggregate amount of the insurance premium that the
7 mortgagee or lender would otherwise have been required to
8 pay if the mortgage or loan had continued to be insured
9 until such maturity date. Where such prepayment occurs,
10 the Secretary is authorized to refund to the mortgagee or
11 the lender for the account of the mortgagor or the borrower
12 all, or such portion as he shall determine to be equitable, of
13 the current unearned insurance premium theretofore paid.

14 (c) The Secretary is authorized to terminate any insur-
15 ance contract upon request by the mortgagor or borrower
16 and the mortgagee or lender. As a condition to terminating
17 the insurance, the Secretary is authorized in his discretion
18 to require the payment of a termination charge computed in
19 the same manner as the adjusted premium charge.

20 (d) The payments specified in subsections (a), (b),
21 and (c) shall be payable by the mortgagee or the lender
22 either in cash or in debentures issued by the Secretary, except
23 that the insurance premium for loans under title III shall
24 be paid only in cash. The debentures presented for such pay-

1 ment shall represent obligations of the particular insurance
2 fund to which such insurance premium is to be credited.

3 (e) (1) In the case of a mortgage insured under section
4 401 covering a single-family dwelling or a one-family unit in
5 a condominium where the mortgagor is a serviceman who
6 at the time of insurance or assumption of the mortgage is
7 the owner of the property and either occupies the property
8 or certifies that his failure to do so is the result of his service
9 assignment, the mortgage insurance premiums fixed by the
10 Secretary shall not be payable by the mortgagee during the
11 period of ownership of the property involved. Such premiums
12 shall be paid not less frequently than once a year, upon
13 request of the Secretary, by the Secretary of Defense, the
14 Secretary of Transportation, or the Secretary of Commerce,
15 as the case may be, from the respective appropriations avail-
16 able for pay and allowances of servicemen.

17 (2) As used in this subsection—

18 (A) The term “serviceman” means a person to
19 whom the Secretary of Defense, the Secretary of Trans-
20 portation, or the Secretary of Commerce, as the case
21 may be, has issued a certificate indicating that such
22 person requires housing, is serving on active duty in
23 the Armed Forces of the United States or in the United
24 States National Oceanic and Atmospheric Administra-
25 tion and has served on active duty for more than two

1 years, but a certificate shall not be issued to any person
2 ordered to active duty for training purposes only. The
3 Secretary of Defense, the Secretary of Transportation, or
4 the Secretary of Commerce, respectively, are authorized
5 to prescribe rules and regulations governing the issuance
6 of such certificate and may withhold issuance of more
7 than one such certificate to a serviceman whenever in
8 his discretion issuance is not justified due to circum-
9 stances resulting from his service assignment.

10 (B) The term "period of ownership" means the
11 period, for which mortgage insurance premiums are
12 fixed, prior to the date that the Secretary of Defense,
13 the Secretary of Transportation, or the Secretary of
14 Commerce, as the case may be, furnishes the Secretary
15 with a certification that such ownership (as defined by
16 the Secretary) has terminated.

17 (3) Where a serviceman dies while on active duty in
18 the Armed Forces of the United States or in the United
19 States National Oceanic and Atmospheric Administration
20 leaving a surviving widow as owner of the property, the
21 period of ownership shall extend for two years beyond the
22 date of the serviceman's death or until the date the widow
23 disposes of the property, whichever date occurs first. The
24 Secretary of Defense, the Secretary of Transportation, or
25 the Secretary of Commerce, as the case may be, shall notify

1 such widow promptly following the serviceman's death of
2 the additional costs to be borne by the mortgagor following
3 termination of the two-year period.

4 PROCESSING FEES AND SERVICE CHARGES

5 SEC. 203. (a) The Secretary is authorized to charge
6 and collect from the mortgagee or lender such amounts as
7 he may deem reasonable for the processing of a mortgage
8 or loan insurance application and for the appraisal and in-
9 spection of the property or project to be covered by the
10 mortgage to be insured or for other services performed by
11 the Secretary, except that charges for appraisal and inspec-
12 tion with respect to multifamily housing shall not aggregate
13 more than 1 per centum of the original principal face amount
14 of the mortgage. All amounts received under this section
15 shall be payable by the mortgagee or lender in cash at such
16 times as the Secretary may require.

17 (b) The Secretary is authorized to include in any mort-
18 gage or loan insured under this Act or in any loan made
19 payable to the Secretary a provision requiring the mortgagor
20 or borrower to pay a service charge to the Secretary in the
21 event the mortgage or loan is held by the Secretary. The
22 service charge shall not exceed the amount prescribed by
23 the Secretary for insurance premiums applicable to such
24 mortgage or loan.

1 TITLE III—INSURANCE FOR PROPERTY IM-
2 PROVEMENT, HISTORIC STRUCTURE PRES-
3 ERVATION, AND MOBILE HOME LOANS

4 TYPES OF LOANS

5 SEC. 301. (a) The Secretary is authorized to insure
6 financial institutions against losses which they may sustain
7 as a result of making, advancing credit in connection with,
8 or purchasing property improvement loans, historic struc-
9 ture preservation loans, and mobile home loans meeting the
10 requirements of this title.

11 (b) The property improvement loan shall be for the
12 purpose of financing alterations, repairs, and improvements
13 upon or in connection with existing structures, and the build-
14 ing of new structures, upon urban, suburban, or rural real
15 property (including the restoration, rehabilitation, rebuild-
16 ing, and replacement of such improvements which have been
17 damaged or destroyed by earthquake, conflagration, tornado,
18 hurricane, cyclone, flood, or other catastrophe), by the own-
19 ers thereof or by the lessees of such real property under a
20 lease expiring not less than six months after the maturity of
21 the loan or advance of credit. Alterations, repairs, and im-
22 provements upon, or in connection with, existing structures
23 may include the provision of fire safety equipment. As used
24 in this title, the term "fire safety equipment" means any de-

1 vice or facility which is designed to reduce the risk of per-
2 sonal injury or property damage resulting from fire and is
3 in conformity with such criteria and standards as shall be
4 prescribed by the Secretary.

5 (c) The mobile home loan shall be for the purpose of
6 financing the purchase of a mobile home to be used by the
7 owner as his principal residence, and may include an amount
8 to finance the acquisition of a lot on which to place such
9 home and to pay expenses reasonably necessary for the appro-
10 priate preparation of such lot, including, but not limited to,
11 the installation of utility connections, sanitary facilities and
12 paving, and the construction of a suitable pad.

13 (d) The historic structure preservation loan shall be for
14 the purpose of financing the preservation of historic struc-
15 tures. As used in this title, the term "historic structures"
16 means residential structures which are registered in the Na-
17 tional Register of Historic Places or which are certified by
18 the Secretary of the Interior to conform to National Register
19 criteria; and the term "preservation" means restoration or
20 rehabilitation undertaken for such purposes as are approved
21 by the Secretary in regulations issued by him, after consult-
22 ing with the Secretary of the Interior.

23 LOAN TERMS

24 SEC. 302. (a) Except as otherwise provided in this
25 subsection, a loan financing property improvements shall—

(1) involve an amount not exceeding \$6,500 except that, if the loan is made for the purpose of financing the alteration, repair, improvement, or conversion of an existing structure used or to be used as an apartment house or a dwelling for two or more families, the loan shall not exceed \$15,000 nor an average amount of \$3,500 per family unit; and

(2) have a maturity not exceeding seven years and thirty-two days, except that such maturity limitation shall not apply if the loan is for the purpose of financing the construction of a new structure for use in whole or in part for agricultural purposes.

Notwithstanding the foregoing limitations, any loan to finance fire safety equipment for a nursing home or other comparable health care facility may involve an amount not exceeding \$10,000 and have a maturity not exceeding twelve years and thirty-two days.

(b) (1) A loan financing the purchase of a mobile home only shall—

(A) involve an amount not exceeding (i) \$10,000 (\$15,000 in the case of a mobile home composed of two or more modules), and (ii) such additional amount as the Secretary shall by regulation prescribe as appropriate to cover the cost of necessary site preparation for the lot on which the home is to be placed; and

1 (B) have a maturity not exceeding twelve years
2 and thirty-two days (fifteen years and thirty-two days
3 in the case of a mobile home composed of two or more
4 modules).

5 (2) A loan financing the purchase of a mobile home
6 and an undeveloped lot on which to place the home shall—

7 (A) involve an amount not exceeding (i) the
8 maximum amount under paragraph (1) (A) of this
9 subsection, and (ii) such amount not to exceed \$5,000
10 as may be necessary to cover the cost of purchasing the
11 lot; and

12 (B) have a maturity not exceeding fifteen years and
13 thirty-two days (twenty years and thirty-two days in
14 the case of a mobile home composed of two or more
15 modules).

16 (3) A loan financing the purchase of a mobile home
17 and a suitably developed lot on which to place the home
18 shall—

19 (A) involve an amount not exceeding (i) the max-
20 imum amount under paragraph (1) (A) (i) of this sub-
21 section, and (ii) such amount not to exceed \$7,500 as
22 may be necessary to cover the cost of purchasing the
23 lot; and

24 (B) have a maturity not exceeding fifteen years
25 and thirty-two days (twenty years and thirty-two days

1 in the case of a mobile home composed of two or more
2 modules).

3 (c) A loan financing the preservation of a historic
4 structure shall—

5 (1) involve an amount not exceeding \$15,000
6 per family unit; and

7 (2) have a maturity not exceeding fifteen years
8 and thirty-two days.

9 REFINANCING

10 SEC. 303. Any loan with respect to which insurance is
11 granted under this title may be refinanced and the maturity
12 thereof extended in accordance with such terms and condi-
13 tions as the Secretary may prescribe, but in no event for an
14 additional amount or term in excess of the maximum pro-
15 vided for in section 302.

16 PROHIBITIONS

17 SEC. 304. The Secretary is authorized to prevent the use
18 of any financial assistance under this title—

19 (1) which would, through multiple loans, result in
20 an outstanding aggregate loan balance with respect to
21 the same property or mobile home exceeding the dollar
22 amount limitation prescribed in this title for the type
23 of loan involved; or

24 (2) which involves new residential structures

1 (other than mobile homes) that have not been com-
2 pleted and occupied for at least six months, except
3 where such requirement is waived by the Secretary.

4 PROPERTY STANDARDS

5 SEC. 305. (a) The Secretary may from time to time
6 declare ineligible for financing under this title any item,
7 product, alteration, repair, improvement, or class thereof,
8 which he determines would not substantially protect or im-
9 prove the basic livability or utility of properties which are
10 to be improved by financing provided under this title. He
11 may also declare ineligible for financing under this title any
12 item which he determines is especially subject to selling
13 abuses.

14 (b) The Secretary shall, with respect to mobile homes
15 to be financed under this title—

16 (1) prescribe minimum property standards to
17 assure the livability and durability of the mobile home
18 and the suitability of the site on which the mobile home
19 is to be located; and

20 (2) obtain assurances from the borrower that the
21 mobile home will be placed on a site which complies
22 with the standards prescribed by the Secretary and
23 with local zoning and other applicable local require-
24 ments.

CONTRACT PROVISIONS

SEC. 306. (a) The insurance granted by the Secretary to any financial institution on loans, advances of credit, and purchases made by such financial institution shall not exceed either—

(1) 10 per centum of the total amount of such loans, advances of credit, and purchases made under and reported for insurance under this title and under section 2 of the National Housing Act after July 1, 1939; or

(2) 90 per centum of the amount of loss on any individual loan, advance of credit, or purchase.

(b) Any payment for loss made to an approved financial institution under this title shall be final and incontestable after two years from the date the claim was certified for payment by the Secretary, in the absence of fraud or misrepresentation on the part of such institution, unless a demand for repurchase of the obligation shall have been made on behalf of the United States prior to the expiration of such two-year period.

WAIVER OF REQUIREMENTS

SEC. 307. The Secretary is authorized to waive compliance with any regulations issued by him pursuant to this title, if the enforcement of such regulations would impose an injustice upon an insured financial institution that has substantially complied with the requirements of such regulations

1 and has acted in good faith. Such waiver shall only be
2 exercised where it does not involve an increase in the obliga-
3 tion of the Secretary beyond the obligation which would
4 have been involved if the regulation had been fully com-
5 plied with.

6 TRANSFER OF INSURANCE

7 SEC. 308. The Secretary is authorized to transfer to any
8 approved financial institution the insurance in connection
9 with any loan which is sold to it by another approved finan-
10 cial institution.

11 TITLE IV—HOME MORTGAGE INSURANCE

12 BASIC INSURANCE PROGRAM

13 SEC. 401. (a) The Secretary is authorized to insure a
14 home mortgage (including open-end advances) meeting the
15 requirements of this section.

16 (b) The mortgage shall—

17 (1) involve a principal obligation not to exceed
18 an amount equal to the sum of (i) 100 per centum
19 of \$20,000 of the Secretary's appraised value of the
20 property as of the date the mortgage is accepted for
21 insurance, (ii) 90 per centum of such value in excess
22 of \$20,000 but not in excess of \$30,000, (iii) 80 per
23 centum of such value in excess of \$30,000 but not in ex-
24 cess of \$40,000, and (iv) 70 per centum of such value
25 in excess of \$40,000; except that in the case of rehabili-

1 tation, or refinancing which involves rehabilitation, the
2 foregoing limitations upon the amount of the mortgage
3 may, in the discretion of the Secretary, be based upon the
4 sum of the estimated cost of rehabilitation and the Sec-
5 retary's estimate of the value of the property before
6 rehabilitation, rather than upon the appraised value of
7 the property;

8 (2) contain complete amortization provisions satis-
9 factory to the Secretary requiring payments by the
10 mortgagor not in excess of his reasonable ability to pay
11 as determined by the Secretary and within such term
12 as the Secretary shall prescribe; and

13 (3) be executed by a mortgagor who shall have
14 paid in cash or its equivalent, on account of the property,
15 at least an amount equivalent to the greater of the closing
16 costs (exclusive of prepaid expenses) or 3 per centum of
17 the Secretary's estimate of the cost of acquisition.

18 (c) Where the mortgage involves a one-family unit in
19 a condominium, the Secretary shall establish such require-
20 ments as he deems appropriate for the protection of the con-
21 sumer. The mortgage covering the condominium unit shall
22 contain such provisions as the Secretary determines to be
23 necessary for the maintenance of the common areas and facili-
24 ties and the condominium project. The Secretary may re-
25 quire that the rights and obligations of the mortgagor and

1 the owners of the condominium units in the project shall be
2 subject to such controls as he determines to be necessary and
3 feasible to promote and protect individual owners, the con-
4 dominium project, and its occupants.

5 (d) The mortgage shall have a principal obligation not
6 in excess of an amount equal to 85 per centum of the amount
7 computed under the provisions of subsection (b) (1) if the
8 mortgage involves—

9 ~~part (1)~~ (1) a newly constructed dwelling which the Sec-
10 retary determines has been completed within twelve
11 months of the sale being financed with a mortgage in-
12 sured under this section but which has not been approved
13 by the Secretary for mortgage insurance or approved by
14 the Administrator of Veterans' Affairs for guaranty, in-
15 surance, or direct loan under chapter 37 of title 38,
16 United States Code, prior to the beginning of construc-
17 tion; or

18 (2) a mortgagor who is not the occupant of the
19 property, except that this requirement for a reduction
20 in the principal obligation of the mortgage shall not be
21 applicable where—

22 (A) the mortgagor is in the military service
23 and his failure to occupy the property is by reason
24 of his service assignment;

25 (B) the mortgagor and mortgagee assume re-

1 sponsibility, in a manner satisfactory to the Secre-
2 tary, for the reduction of the outstanding principal
3 amount of the mortgage, in the event the mortgaged
4 property is not (prior to the date of the eighteenth
5 amortization payment of the mortgage) sold to a
6 purchaser acceptable to the Secretary who is the
7 occupant of the property and who assumes and
8 agrees to pay the mortgage indebtedness; or

9 (C) the mortgage covers experimental property
10 and the Secretary approves the waiver of such
11 requirement.

12 (e) The seller, builder, or such other person as the
13 Secretary may designate shall deliver to the mortgagor
14 (prior to the completion of the sale) a written statement
15 setting forth the amount of the appraised value of the prop-
16 erty, as determined by the Secretary. Where the property
17 is to be rehabilitated by the owner thereof and the amount
18 of the mortgage is not based on the appraised value of the
19 property, the Secretary shall furnish such owner a statement
20 of the Secretary's estimate of the appraised value of the
21 property after the proposed improvements are completed.

22 (f) (1) Where the mortgage involves a dwelling which
23 is approved for mortgage insurance prior to the beginning
24 of construction, the seller, or such other person as may be
25 required by the Secretary, shall deliver to the mortgagor a

1 warranty that the dwelling is constructed in substantial con-
2 formity with the plans and specifications (including any
3 amendments thereof, or changes or variations therein ap-
4 proved in writing by the Secretary) on which the Secretary
5 based his valuation of the dwelling. This warranty shall
6 apply only with respect to such instances of substantial non-
7 conformity to the plans and specifications approved by the
8 Secretary as to which the mortgagor has given written
9 notice to the warrantor within one year from the date of con-
10 veyance of title to, or initial occupancy of, the dwelling,
11 whichever first occurs.

12 (2) The warranty required by this subsection shall be
13 in addition to, and not in derogation of, all other rights and
14 privileges which the mortgagor may have under any other
15 law or instrument. The Secretary is directed to permit copies
16 of the plans and specifications (including any amendments
17 or variations approved in writing by the Secretary) for the
18 dwellings covered by warranties under this subsection to be
19 made available in the appropriate local offices for inspection
20 or for copying by any mortgagor or warrantor during such
21 periods of time as the Secretary deems reasonable.

22 (g) (1) The Secretary is authorized to insure under this
23 section a home mortgage covering property located in a
24 neighborhood preservation area, and executed to refinance

1 existing indebtedness secured by the property and to finance
2 any needed repairs and improvements to the property.

3 (2) The Secretary shall prescribe such terms and con-
4 ditions as he deems necessary to assure that—

5 (A) refinancing pursuant to this subsection results
6 in the making of any repairs to the property that are
7 necessary to place it in a sound condition or results in
8 the refinancing of a mortgage containing a balloon pay-
9 ment provision, and is not used primarily to reduce the
10 monthly debt service payable by the mortgagor except
11 in hardship cases as determined by the Secretary; and

12 (B) the mortgagor or a member of his immediate
13 family shall have owned the property for a period of
14 not less than three years prior to such refinancing unless
15 the mortgagor shall be a nonprofit, limited profit or
16 cooperative certified by the Secretary as being eligible
17 to participate in the refinancing program in neighbor-
18 hood preservation areas under criteria established by
19 the Secretary.

20 (3) A mortgage insured under this subsection may in-
21 clude such service charges, and appraisal, inspection, or other
22 fees as the Secretary may approve.

23 (4) In any case where a mortgage insured under this
24 subsection covers property which is generating rental in-

1 come, the Secretary may, in his discretion, require the
2 mortgagor to meet the additional requirements of sec-
3 tion 501 (k) (2).

4 HOMEOWNERSHIP ASSISTANCE

5 SEC. 402. (a) For the purpose of assisting lower in-
6 come families in acquiring or maintaining homeownership,
7 the Secretary is authorized to make, and to contract to
8 make, periodic assistance payments on behalf of such home-
9 owners. The assistance shall be accomplished through pay-
10 ments to mortgagees holding mortgages which meet the
11 requirements of, and are insured under, this section.

12 (b) The assistance payments to a mortgagee by the
13 Secretary on behalf of a mortgagor shall be made during
14 such time as the mortgagor shall continue to occupy the
15 property which secures the mortgage. Such payments may
16 also be made on behalf of a homeowner who assumes a mort-
17 gage insured under this section with respect to which assist-
18 ance payments have been made on behalf of the previous
19 owner, if the new homeowner is approved by the Secretary
20 as eligible for receiving such assistance. The Secretary is also
21 authorized to continue making assistance payments where
22 the mortgage has been assigned to the Secretary.

23 (c) The assistance payment shall be in an amount not
24 exceeding the lesser of—

25 (1) the balance of the monthly payment for prin-

1 cipal, interest, taxes, and insurance due under the mort-
2 gage remaining unpaid after applying 20 per centum of
3 the mortgagor's income; or

4 (2) the difference between the monthly payment
5 for principal and interest, which the mortgagor is obli-
6 gated to pay under the mortgage and the monthly pay-
7 ment for principal and interest which the mortgagor
8 would be obligated to pay if the mortgage were to bear
9 interest at the rate of 1 per centum per annum.

10 (d) The Secretary may include in the payment to the
11 mortgagee such amount, in addition to the amount computed
12 under subsection (c), as he deems appropriate to reimburse
13 the mortgagee for its additional expenses in handling the
14 mortgage.

15 (e) Procedures shall be adopted by the Secretary for
16 recertifications of the mortgagor's income at intervals of two
17 years (or at shorter intervals where the Secretary deems it
18 desirable) for the purpose of adjusting the amount of the
19 assistance payments within the limits of the formula de-
20 scribed in subsection (c).

21 (f) The Secretary shall take such steps as he deems
22 necessary to assure that the sales price of, or other consider-
23 ation paid in connection with, the property with respect to
24 which assistance payments are to be made is not inflated
25 or excessive.

1 (g) (1) There are authorized to be appropriated such
2 sums as may be necessary to carry out the provisions of this
3 section, including such sums as may be necessary to make
4 the assistance payments under contracts entered into under
5 this section. The aggregate amount of outstanding contracts
6 to make such payments shall not exceed amounts approved
7 in appropriation Acts, and payments pursuant to such con-
8 tracts (and any contracts entered into under section 235 of
9 the National Housing Act) shall not exceed \$75,000,000
10 per annum prior to July 1, 1969, which maximum dollar
11 amount shall be increased by \$125,000,000 on July 1, 1969,
12 by \$150,000,000 on July 1, 1970, by \$200,000,000 on
13 July 1, 1971, by \$115,000,000 on July 1, 1972, and by
14 \$200,000,000 on July 1, 1974.

15 (2) Not more than 30 per centum of the total amount
16 of contracts for assistance payments authorized by appropri-
17 ation Acts may be made with respect to existing dwellings
18 or dwelling units in existing projects, including property
19 described in subsection (h) (1) (B), as defined by the
20 Secretary.

21 (3) Not less than 10 per centum of the total amount
22 of contracts for assistance payments authorized by appropri-
23 ation Acts to be made after June 30, 1971, shall be avail-
24 able for use only with respect to dwellings, or dwelling

1 units in projects, which are approved by the Secretary
2 prior to substantial rehabilitation.

3 (h) The Secretary is authorized to insure a home mort-
4 gage (including advances with respect to property con-
5 structed or rehabilitated pursuant to a self-help program)
6 which meets the requirements of section 401, except as such
7 requirements are modified by this section. The mortgage
8 shall—

9 (1) involve (A) a single-family dwelling, or a one-
10 family unit in a condominium, or a one-family unit sold
11 by a cooperative, or (B) a single family dwelling where
12 the mortgage is executed by the owner-occupant to
13 finance the rehabilitation of such dwelling; and

14 (2) have a principal obligation not to exceed the
15 appraised value of the property as of the date the mort-
16 gage is accepted for insurance or, in the case of reha-
17 bilitation, the sum of the estimated cost of rehabilita-
18 tion and the Secretary's estimate of the value of the
19 property before rehabilitation (in the case of rehabili-
20 tation by the owner-occupant, the principal obligation
21 shall not exceed the sum of the estimated cost of
22 rehabilitation and the amount, as determined by the
23 Secretary, required to refinance existing indebtedness
24 secured by the property) plus such amount to cover

1 closing costs and prepaid expenses, as the Secretary
2 shall approve, but not to exceed the full amount of such
3 costs less \$200.

4 (i) No assistance payments shall be made under this
5 section with respect to any mortgage securing a loan to
6 finance the rehabilitation of any owner-occupied property,
7 unless—

8 (1) the property is located in a neighborhood which
9 is sufficiently stable to support long-term values or in
10 which the community is carrying out or planning to
11 carry out a program for neighborhood preservation, con-
12 servation, or rehabilitation;

13 (2) the property, without rehabilitation, does not
14 conform to public standards for decent, safe, and sani-
15 tary housing as required by applicable codes; and

16 (3) the improvements to be undertaken in connec-
17 tion with such rehabilitation are reasonably required to
18 provide decent, safe, and sanitary housing in accordance
19 with criteria and standards prescribed by the Secretary.

20 (j) As used in this section the term “lower income
21 families” means those families whose incomes do not exceed
22 90 per centum of the median income for the area, as deter-
23 mined by the Secretary with adjustments for smaller and
24 larger families, except that the Secretary may establish in-
25 come ceilings higher or lower than 90 per centum of the

1 median for the area on the basis of his findings that such
2 variations are necessary because of prevailing levels of con-
3 struction costs, unusually high- or low-median family
4 incomes, or other factors.

5 (k) In determining the income of any family for the
6 purpose of this section, the Secretary shall consider income
7 from all sources of each member of the family residing in
8 the household, except that there shall be excluded—

9 (1) the income of any family member (other
10 than the head of the household or his spouse) who is
11 under eighteen years of age or is a full-time student;

12 (2) the first \$300 of the income of a secondary
13 wage earner who is the spouse of the head of the house-
14 hold;

15 (3) an amount equal to 5 per centum of the in-
16 come of the head of the household and his spouse (or,
17 in the case of an elderly family, 10 per centum of such
18 income) ;

19 (4) an amount equal to \$300 for each member of
20 the family residing in the household (other than the
21 head of the household or his spouse) who is under
22 eighteen years of age or who is eighteen years of age
23 or older but has no income included in family income for
24 purposes of this section;

1 (5) nonrecurring income, as determined by the
2 Secretary;

3 (6) extraordinary medical or other expenses as
4 the Secretary approves for exclusion; and

5 (7) an amount equal to the sums received by the
6 head of the household or his spouse from, or under the
7 direction of, any public or private nonprofit child place-
8 ing agency for the care and maintenance of one or more
9 persons who are under eighteen years of age and were
10 placed in the household by such agency.

11 (1) The Secretary shall from time to time allocate and
12 transfer to the Secretary of Agriculture, for use (in ac-
13 cordance with the terms and conditions of this section) in
14 rural areas and small towns, a reasonable portion of the total
15 authority to contract to make assistance payments as ap-
16 proved in Appropriation Acts under subsection (g).

17 (m) The Secretary shall furnish counseling and advice
18 to homeowners assisted under this section with respect to
19 household maintenance, financial management, and such
20 other matters as may be appropriate to assist them in meet-
21 ing the responsibilities of homeownership.

22 TITLE V—PROJECT MORTGAGE INSURANCE

23 MULTIFAMILY HOUSING

24 SEC. 501. (a) For the purposes of this section—

25 (1) The term “multifamily housing” means (i) hous-

1 ing or a housing project in which the occupancy of the
2 dwelling units is permitted by the owner thereof in considera-
3 tion of the payment of agreed rental charges; (ii) housing
4 or a housing project which is owned by a cooperative or
5 which is constructed or rehabilitated by an investor-sponsor
6 who meets such requirements as the Secretary may impose
7 to assure that the consumer interest is protected, and who
8 has an agreement for the sale of the project to a cooperative
9 eligible for mortgage insurance under the provisions of this
10 title; (iii) housing or a housing project in which the in-
11 dividual dwelling units are to be sold, on a condominium
12 basis, by a cooperative, or otherwise, to purchasers eligible
13 for mortgage insurance under the provisions of title IV;
14 and (iv) a mobile home court.

15 (2) The term "replacement cost" means the Secre-
16 tary's estimate of the value of the land, the cost of the
17 proposed physical improvements, utilities within the bound-
18 aries of the property or project, architect's fees, taxes and
19 interest during construction, other miscellaneous charges
20 incident to construction and the initial operation or dispo-
21 sition of the project as may be approved by the Secretary,
22 and a builder's and sponsor's profit and risk allowance of
23 10 per centum of all of the foregoing items except the land,
24 or such lower percentage as the Secretary deems to be
25 reasonable and prescribes by regulation, with respect to all

1 or to particular categories of projects. In the case of a
2 cooperative or nonprofit mortgagor, the foregoing profit and
3 risk allowance shall be paid exclusively to the builder in
4 lieu of any other fee.

5 (b) The Secretary is authorized to insure a mortgage
6 (including advances) which covers property involving a
7 multifamily housing project. The mortgage shall be executed
8 by a mortgagor approved by the Secretary. The Secretary
9 may require any such mortgagor to be regulated or restricted
10 as to rents or sales, charges, capital structure, rate of return,
11 and methods of operation. Such regulation and restriction
12 shall remain in effect until the termination of all obligations
13 of the Secretary under the mortgage insurance and during
14 such further period of time as the Secretary shall be the
15 owner, holder, or reinsurer of the mortgage.

16 (c) The mortgage may involve the financing of new
17 construction, the rehabilitation of an existing structure or
18 structures, or the purchase or refinancing of an existing proj-
19 ect (as defined by the Secretary) which meets such stand-
20 ards as may be prescribed by the Secretary.

21 (d) If new construction is involved, the mortgage shall
22 have a principal obligation not in excess of 90 per centum
23 (98 per centum in the case of a cooperative mortgagor) of
24 the estimated replacement cost of the property or project
25 when the proposed improvements are completed.

1 (e) If rehabilitation is involved, the mortgage shall have
2 a principal obligation not in excess of 90 per centum (98 per
3 centum in the case of a cooperative mortgagor) of the sum
4 of (i) the Secretary's estimate of the cost of the rehabilitation
5 plus (ii) the Secretary's estimate of the value of the property
6 before the rehabilitation.

7 (f) If the purchase or refinancing of an existing prop-
8 erty without rehabilitation is involved, the mortgage shall
9 have a principal obligation not in excess of 90 per centum
10 (98 per centum in the case of a cooperative mortgagor) of
11 the purchase price of or the existing indebtedness on the
12 property, whichever is applicable, or the Secretary's esti-
13 mate of the fair market value as of the date the mortgage is
14 accepted for insurance, whichever is less.

15 (g) In the case of a cooperative or nonprofit mort-
16 gagor, the percentages otherwise applicable under subsection
17 (d), (e), or (f) shall be increased to 100 per centum if the
18 principal obligation of the mortgage does not exceed the
19 amount which could be insured with respect to the project
20 under section 502.

21 (h) If the dwelling units in a project are to be sold to
22 individual purchasers, the principal obligation of the blanket
23 mortgage shall be further limited to the sum of the individual
24 mortgage amounts which could be insured for owner-occu-

1 pants of the proposed individual dwellings or condominium
2 units under title IV.

3 (i) The mortgage shall provide for complete amortiza-
4 tion by periodic payments within such term as the Secretary
5 shall prescribe.

6 (j) The property or project shall include five or more
7 dwelling units (which, with the approval of the Secretary,
8 need not be self-contained living units) or five or more spaces
9 in a mobile home court, and may include such nondwelling
10 facilities as the Secretary deems adequate and appropriate
11 to serve the occupants and the surrounding neighborhood,
12 except that the project shall be predominantly residential.
13 Any nondwelling facility to be included in the project shall
14 be found by the Secretary to contribute to the economic
15 feasibility of the project (and the Secretary shall give due
16 consideration to the possible effect of the project on other
17 business enterprises in the community). In the case of a
18 project designed primarily for the elderly or handicapped,
19 the project may include cafeterias, dining halls, workshops,
20 infirmaries, or other inpatient or outpatient facilities, and
21 other essential service facilities.

22 (k) (1) The Secretary is authorized to insure a mort-
23 gage under this section covering property located in a neigh-
24 borhood preservation area and executed to refinance existing

1 indebtedness secured by the property and to finance any
2 needed repairs and improvements to the property.

3 (2) The Secretary shall prescribe such terms and condi-
4 tions as he deems necessary to assure that—

5 (A) refinancing pursuant to this subsection results
6 in the making of any repairs to the property that are
7 necessary to place it in a sound condition or results
8 in the refinancing of a mortgage containing a balloon
9 payment provision, and is not used primarily to reduce
10 the monthly debt service payable by the mortgagor
11 except in hardship cases as determined by the Secretary;

12 (B) the mortgagor or a member of his immediate
13 family shall have owned the property for a period of not
14 less than three years prior to such refinancing unless the
15 mortgagor shall be a nonprofit, limited profit, or coop-
16 erative certified by the Secretary as being eligible to
17 participate in the refinancing program in neighborhood
18 preservation areas under criteria established by the
19 Secretary;

20 (C) the property will be continuously maintained
21 in a sound condition for the period of the loan, and the
22 mortgagor shall commit to maintenance expenditures
23 not less than that percentage of his annual rental income

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1 which the Secretary deems necessary or appropriate to
2 maintain the building in such condition;

3 (D) during the mortgage term no rental increases
4 shall be made except those which are necessary to offset
5 actual and reasonable operating expense increases or
6 debt service payment increases due to any loan provided
7 under paragraph (4) ;

8 (E) before any rental increase takes effect, ten-
9 ants shall be afforded reasonable notice of the proposed
10 increase and a sufficient opportunity to present written
11 objections to the Secretary and to be heard thereon; and

12 (F) no excessive rent increase has been made in
13 anticipation of participation in the benefits provided
14 by this subsection.

15 (3) A mortgage insured pursuant to this subsection may
16 include such service charges, and appraisal, inspection, or
17 other fees as the Secretary shall approve.

18 (4) If during the mortgage term, the mortgagor is
19 required to make major repairs which were not anticipated
20 at the time the original mortgage was executed, the Secre-
21 tary may in his discretion insure a supplemental project loan
22 for that purpose, as authorized under section 504.

23 MULTIFAMILY HOUSING ASSISTANCE

24 SEC. 502. (a) For the purpose of reducing rentals for
25 lower income tenants, the Secretary is authorized to make,

1 and to contract to make, periodic assistance payments on
2 behalf of the owner of a multifamily housing project, which
3 shall be accomplished through payments to mortgagees hold-
4 ing mortgages meeting the requirements specified in this
5 section. Nothing in this section prohibits the making of
6 such payments with respect to any such project which is
7 designed for and occupied exclusively by elderly families.

8 (b) Assistance payments with respect to a project shall
9 only be made by the Secretary during such time as the proj-
10 ect is operated as a multifamily housing project and (1) is
11 subject to a mortgage which is insured under subsection (i),
12 or subject to a mortgage bond guaranteed under section 2A
13 or in the case of a project for which the Secretary has issued
14 a commitment to insure or guarantee upon completion, pay-
15 ments may be made at the time of endorsement for insurance
16 or guarantee to cover the period between the time the project
17 was ready for occupancy and the time of such endorsement;
18 (2) is subject to a mortgage which has been assigned to the
19 Secretary; or (3) is owned by a private nonprofit corporation
20 or other private nonprofit entity, a limited distribution corpo-
21 ration or other limited distribution entity, or a cooperative,
22 and is financed under a State or local program providing
23 assistance through loans, loan insurance, or tax abatements,
24 and which prior to the completion of construction or rehabili-

1 tation is approved for receiving the benefits of this section
2 with respect to all or a part of the project.

3 (c) The assistance payment to a mortgagee by the Sec-
4 retary on behalf of a project owner shall be in an amount
5 not exceeding the difference between the monthly payment
6 for principal and interest which the project owner as a mort-
7 gagor is obligated to pay under the mortgage and the
8 monthly payment for principal and interest such project
9 owner would be obligated to pay if the mortgage were to
10 bear interest at the rate of 1 per centum per annum.

11 (d) The Secretary may include in the payment to the
12 mortgagee such amount, in addition to the amount computed
13 under subsection (c), as he deems appropriate to reimburse
14 the mortgagee for its additional expenses in handling the
15 mortgage.

16 (e) As a condition for receiving the benefits of assist-
17 ance payments, the project owner shall operate the project
18 in accordance with such requirements with respect to tenant
19 eligibility and rents as the Secretary may prescribe. In pre-
20 scribing such requirements the Secretary shall seek to assure,
21 insofar as is practicable, that in each assisted project there is
22 a reasonable range in the income levels of tenants. Proce-
23 dures shall be adopted by the Secretary for review of tenant
24 incomes at intervals of two years (or at shorter intervals
25 where the Secretary deems it desirable) . ‘

1 (f) (1) For each dwelling unit there shall be estab-
2 lished with the approval of the Secretary (i) a basic rental
3 charge determined on the basis of operating the project with
4 payments of principal and interest due under a mortgage
5 bearing interest at the rate of 1 per centum per annum;
6 and (ii) a fair market rental charge determined on the basis
7 of operating the project with payments of principal, interest,
8 and mortgage insurance premium or mortgage bond guaran-
9 tee fee (or other comparable charges approved by the Secre-
10 tary) which the mortgagor is obligated to pay under the
11 mortgage covering the project. The rental for each dwelling
12 unit shall be at the basic rental charge or such greater
13 amount, not exceeding the fair market rental charge, as rep-
14 resents 25 per centum of the tenant's income.

15 (2) In the case of a project involving the rehabilitation
16 of an existing structure or structures, tenants in possession,
17 regardless of income, shall have the right to continue in oc-
18 cupancy after completion of rehabilitation: *Provided*, That
19 they pay the fair market rental charge of 25 per centum of
20 their income, whichever is less: *Provided further*, That such
21 income does not exceed \$10,000 per annum, with suitable
22 adjustments upward as determined by the Secretary based
23 on family size and local cost of living.

24 (3) With respect to 20 per centum of the dwelling
25 units in any project, the Secretary is authorized to make,

1 and contract to make, additional assistance payments to the
2 project owner on behalf of tenants whose incomes are too
3 low for them to afford the basic rentals with 25 per centum
4 of their income. The additional assistance payments au-
5 thorized by this paragraph with respect to any dwelling
6 unit shall be the amount required to reduce the rental pay-
7 ment by the tenant to 25 per centum of the tenant's income.
8 In no case shall such rental payment be reduced below an
9 amount equal to utility costs attributable to the unit occupied
10 by the tenant, unless the Secretary determines that the ap-
11 plication of this requirement in any area would result in
12 undue hardship because of unusually high utility costs pre-
13 vailing seasonally or otherwise in such area. Notwithstand-
14 ing the foregoing provisions of this paragraph, the Secretary
15 may—

16 (A) reduce such 20 per centum requirement in
17 the case of any project if he determines that such action
18 is necessary to assure the economic viability of the
19 project

20 (B) increase such 20 per centum requirement in
21 the case of any project if he determines that such action
22 is necessary and feasible having regard to the objective
23 stated in subsection (e) ; and

24 (C) make such payments with respect to not more
25 than 60 per centum of the units in any project in which

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1 all or substantially all of the dwelling units are occupied
2 by elderly families.

3 Not less than one-half of the units with respect to which
4 assistance payments are made under this paragraph shall
5 be occupied by very low income tenants.

6 (4) For each project there shall be established an ini-
7 tial operating expense level, which shall be the sum of the
8 cost of utilities, maintenance, and local property taxes pay-
9 able by the project owner at the time the Secretary deter-
10 mines the property to be fully occupied, taking into account
11 anticipated and customary vacancy rates. At any time sub-
12 sequent to the establishment of an initial operating expense
13 level, the Secretary is authorized to make, and contract to
14 make, additional assistance payments to the project owner
15 in an amount not to exceed either (A) the amount by
16 which the sum of the cost of utilities, maintenance, and
17 local property taxes exceeds the initial operating expense
18 level, or (B) the amount required to maintain the basic
19 rentals of any units at levels not in excess of 30 per centum
20 of the income of tenants occupying such units. Any contract
21 to make additional assistance payments may be amended
22 periodically to provide for appropriate adjustments in the
23 amount of the assistance payments. Additional assistance
24 payments shall be made pursuant to this paragraph only if
25 the Secretary finds that the increase in the cost of utilities,

1 maintenance, or local property taxes, is reasonable and is
2 comparable to cost increases affecting other rental projects
3 in the community.

4 (g) The project owner shall, as required by the Secre-
5 tary, accumulate, safeguard, and periodically pay to the
6 Secretary all rental charges collected in excess of the basic
7 rental charges. Such excess charges shall be credited to the
8 appropriation authorized by subsection (h) and shall be
9 available until the end of the next fiscal year for the purpose
10 of making assistance payments with respect to rental housing
11 projects receiving assistance under this section.

12 (h) (1) There are authorized to be appropriated such
13 sums as may be necessary to carry out the provisions of this
14 section, including such sums as may be necessary to make
15 assistance payments under contracts entered into by the
16 Secretary under this section. The aggregate amount of out-
17 standing contracts to make such payments shall not exceed
18 amounts approved in appropriation Acts, and payments pur-
19 suant to such contracts (and any contracts entered into under
20 section 236 of the National Housing Act) shall not exceed
21 \$75,000,000 per annum prior to July 1, 1969, which maxi-
22 mum dollar amount shall be increased by \$125,000,000 on
23 July 1, 1969, by \$150,000,000 on July 1, 1970, by
24 \$200,000,000 on July 1, 1971, by \$225,000,000 on July 1,
25 1972, and by \$300,000,000 on July 1, 1974.

1 (2) Not less than 15 per centum nor more than 25 per
2 centum of the total amount of contracts for assistance pay-
3 ments authorized in appropriation Acts to be made after
4 June 30, 1973, shall be available for use only with respect to
5 projects which are planned in whole or in part for occupancy
6 by elderly families. Not less than 30 per centum of the
7 amount of contracts available for the use described in the
8 preceding sentence shall be available for use only with
9 respect to integrated projects, except that such 30 per centum
10 requirement may be reduced to not less than 15 per centum
11 if the Secretary determines that it is necessary to assure the
12 viability of the housing for the elderly program. As used in
13 this paragraph, the term "integrated projects" means any
14 project in which not less than 10 per centum nor more than
15 50 per centum of the dwelling units are planned for occu-
16 pancy by elderly families.

17 (3) Not less than 10 per centum of the total amount of
18 contracts for assistance payments authorized by appropriation
19 Acts to be made after June 30, 1971, shall be available for
20 use only with respect to dwellings, or dwelling units in
21 projects, which are approved by the Secretary prior to
22 rehabilitation.

23 (i) (1) The Secretary is authorized to insure a mort-
24 gage (which meets the requirements of section 501, except
25 as such requirements are modified by this section) upon a

1 multifamily housing project to be occupied primarily by
2 those who are lower income tenants at the time of initial
3 occupancy.

4 (2) If the mortgage is executed by a mortgagor which
5 is a cooperative, a private nonprofit corporation or associa-
6 tion, or a builder-seller, as defined by the Secretary, the
7 principal obligation of the mortgage shall not exceed—

8 (A) in the case of new construction, the Secretary's
9 estimate of the replacement cost of the property or
10 project when the proposed improvements are com-
11 pleted; or

12 (B) in the case of rehabilitation, the sum of the
13 Secretary's estimate of the cost of rehabilitation plus the
14 Secretary's estimate of the value of the property before
15 rehabilitation.

16 (3) If the mortgage is executed by a limited distribu-
17 tion corporation or other limited distribution entity, as de-
18 fined by the Secretary, or by an investor-sponsor who agrees
19 to sell the project to a cooperative, and who meets such re-
20 quirements as the Secretary may prescribe to assure that the
21 consumer interest is protected, the amount of the mortgage
22 shall not exceed 90 per centum of the amount otherwise
23 authorized under this section.

24 (4) In the case of a project financed with a mortgage
25 insured under this subsection or under section 236 of the

1 National Housing Act, which involves a mortgagor other than
2 a cooperative or a private nonprofit corporation or asso-
3 ciation, and which is sold to a cooperative or a nonprofit
4 corporation or association, the Secretary is further author-
5 ized to insure under this subsection a mortgage given by
6 such purchaser in an amount not exceeding the appraised
7 value of the property at the time of purchase, which value
8 shall be based upon a mortgage amount on which the debt
9 service can be met from the income of the property when
10 operated on a nonprofit basis, after payment of all operating
11 expenses, taxes, and required reserves.

12 (j) As used in this section—

13 (1) The term “tenant” includes a member of a co-
14 operative and the terms “rental” and “rental charge”
15 mean, with respect to members of a cooperative, the
16 charges under the occupancy agreements between such
17 members and the cooperative; and

18 (2) The term “lower income tenants” means those
19 tenants whose incomes do not exceed 90 per centum
20 of the median income for the area, as determined by the
21 Secretary with adjustments for smaller and larger fam-
22 ilies, except that the Secretary may establish income
23 ceilings higher or lower than 90 per centum of the
24 median for the area on the basis of his findings that
25 such variations are necessary because of prevailing

1 levels of construction costs, unusually high or low family
2 incomes, or other factors.

3 (3) The term “very low income tenants” means
4 those tenants whose incomes do not exceed 50 per cen-
5 tum of the median income for the area, as determined
6 by the Secretary with adjustments for smaller and larger
7 families.

8 (4) The term “elderly families” means families
9 which consist of two or more persons the head of which
10 (or his spouse) is sixty-two years of age or over. Such
11 term also means a single person who is sixty-two years
12 of age, and includes families consisting of two or more
13 persons, the head of which (or his spouse) is handi-
14 capped. A person shall be considered handicapped if
15 such person is determined, pursuant to regulations issued
16 by the Secretary, to have a physical impairment which
17 (A) is expected to be of long-continued and indefinite
18 duration, (B) substantially impedes his ability to live
19 independently, and (C) is of such a nature that such
20 ability could be improved by more suitable housing
21 conditions.

22 (k) In determining the income of any family for the
23 purpose of this section, the Secretary shall consider income
24 from all sources of each member of the family residing in
25 the household, except that there shall be excluded—

1 (1) the income of any family member (other
2 than the head of the household or his spouse) who is
3 under eighteen years of age or is a full-time student ;

4 (2) the first \$300 of the income of a secondary
5 wage earner who is the spouse of the head of the
6 household ;

7 (3) an amount equal to 5 per centum of the in-
8 come of the head of the household and his spouse (or,
9 in the case of an elderly family, 10 per centum of such
10 income) ;

11 (4) an amount equal to \$300 for each member of
12 the family residing in the household (other than the
13 head of the household or his spouse) who is under
14 eighteen years of age or who is eighteen years of age
15 or older but has no income included in family income for
16 purposes of this section ;

17 (5) nonrecurring income, as determined by the
18 Secretary ;

19 (6) extraordinary medical or other expenses as
20 the Secretary approves for exclusion ; and

21 (7) an amount equal to the sums received by the
22 head of the household or his spouse from, or under the
23 direction of, any public or private nonprofit child placing
24 agency for the care and maintenance of one or more

1 persons who are under eighteen years of age and were
2 placed in the household by such agency.

3 (l) The Secretary is authorized to enter into agree-
4 ments with any State or agency thereof under which such
5 State or agency thereof contracts to make assistance pay-
6 ments, subject to the terms and conditions specified in this
7 section and in rules, regulations, and procedures adopted by
8 the Secretary under this section, with respect to a project
9 which has been approved by the Secretary prior to the
10 beginning of construction or rehabilitation. Any funds pro-
11 vided by a State or agency thereof for the purpose of making
12 assistance payments shall be administered, disbursed, and
13 accounted for by the Secretary in accordance with the agree-
14 ments entered into by the Secretary with the State or agency
15 thereof and for such fees as shall be specified therein. Before
16 entering into any agreements pursuant to this subsection the
17 Secretary shall require assurances satisfactory to him that
18 the State or agency thereof is able to provide sufficient funds
19 for the making of assistance payments for the full period
20 specified in the assistance payment contract, and the Sec-
21 retary shall undertake no obligation to make such assistance
22 payments as surety, guarantor, or in any other similar
23 capacity.

24 (m) The Secretary is authorized to enter into contracts
25 with State or local agencies approved by him to provide

1 for the monitoring and supervision by such agencies of the
2 management by private sponsors of projects assisted under
3 this section. Such contracts shall require that such agencies
4 promptly report to the Secretary any deficiencies in the
5 management of such projects in order to enable the Secre-
6 tary to take corrective action at the earliest practicable time.

7 MORTGAGE INSURANCE FOR HEALTH FACILITIES

8 SEC. 503. (a) For the purposes of this section—

9 (1) The term “hospital” means a proprietary facility,
10 or facility of a private nonprofit corporation or association,
11 which provides community service for inpatient medical care
12 of the sick or injured (including obstetrical care).

13 (2) The term “nursing home” means a proprietary facil-
14 ity, or facility of a private nonprofit corporation or associa-
15 tion, for the accommodation of convalescents or other persons
16 who are not acutely ill and not in need of hospital care
17 but who require skilled nursing care and related medical
18 services, in which such nursing care and medical services are
19 prescribed by, or are performed under the general direction
20 of, persons licensed to provide such care or services in accord-
21 ance with the laws of the State where the facility is located.

22 (3) The term “intermediate care facility” means a
23 proprietary facility, or facility of a private nonprofit cor-
24 poration or association, for the accommodation of persons

1 who require minimum but continuous care but are not in
2 need of continuous medical or nursing services.

3 (4) The term "group practice facility" means a pro-
4 prietary facility, or a facility of a private nonprofit cor-
5 poration or association, for the provision of preventive, diag-
6 nostic, and treatment services to ambulatory patients in
7 which patient care is under the professional supervision of
8 persons licensed to practice medicine in the State or, in the
9 case of optometric care or treatment, is under the professional
10 supervision of persons licensed to practice optometry in
11 the State or, in the case of dental diagnosis or treatment, is
12 under the professional supervision of persons licensed to
13 practice dentistry in the State or, in the case of podiatric
14 care or treatment, is under the professional supervision of
15 persons licensed to practice podiatry in the State.

16 (5) The term "medical practice facility" means an
17 adequately equipped facility in which one or more (not
18 to exceed four) persons licensed to practice medicine in
19 the State where the facility is located can provide, as may
20 be appropriate, preventive, diagnostic, and treatment serv-
21 ices, and which is situated in a rural area or small town,
22 or in a low-income section of an urban area, in which there
23 exists, as determined by the Secretary, a critical shortage
24 of physicians. As used in this paragraph, the term "small
25 town" means any town, village, or city having a population

1 of not more than 10,000 inhabitants according to the most
2 recent available data compiled by the Bureau of the Census;
3 and the term "low-income section of an urban area" means
4 a section of a larger urban area in which the median family
5 income is substantially lower, as determined by the Secre-
6 tary, than the median family income for the area as a whole.

7 (6) The term "replacement cost" means the Secre-
8 tary's estimate of the value of the land, the cost of the
9 proposed physical improvements, major equipment to be
10 installed and used in the operation of the health facility, utili-
11 ties within the boundaries of the property, architect's and
12 builder's fees, taxes and interest during construction, and
13 other miscellaneous charges incident to construction and the
14 initial operation of the project which are approved by the
15 Secretary.

16 (b) (1) The Secretary is authorized to insure a mort-
17 gage (including advances) which covers a new or rehabili-
18 tated project designed for use as a hospital, nursing home,
19 intermediate care facility, group practice facility, or medical
20 practice facility (or any combination of the foregoing). The
21 mortgage shall be executed by a mortgagor approved by the
22 Secretary. The Secretary may require any such mortgagor
23 to be regulated or restricted as to charges and methods of
24 financing, and in addition thereto, if the mortgagor is a cor-
25 porate entity, as to capital structure and rate of return.

1 (2) The mortgage shall involve a principal obligation
2 in an amount not to exceed in the case of new construction,
3 90 per centum of the estimated replacement cost of the prop-
4 erty or project when the proposed improvements are com-
5 pleted and the equipment installed; or, in the case of re-
6 habilitation, 90 per centum of the sum of the estimated cost
7 of rehabilitation (including the cost of any equipment to be
8 installed or rehabilitated) and the Secretary's estimate of
9 the value of the property before rehabilitation.

10 (3) The mortgage shall provide for complete amortiza-
11 tion by periodic payments within such term as the Secretary
12 shall prescribe.

13 (c) The Secretary shall not insure a mortgage under
14 this section unless—

15 (1) with respect to a hospital (A) the hospital
16 shall be planned and operated so that not more than
17 50 per centum of the total patient days during any year
18 shall customarily be assigned to the categories of chronic
19 convalescent and rest, drug and alcoholic, epileptic,
20 mentally deficient, mental, nervous and mental, and
21 tuberculosis; and (B) the Secretary shall have received
22 from the state agency designated in accordance with
23 section 604(a) (1) of the Public Health Service Act
24 for the State in which the hospital would be located
25 (i) a certification that there is a need for such hospital,

1 and there are in force in such State or the political sub-
2 division of the State in which the hospital would be
3 located reasonable minimum standards for licensing and
4 for methods of operation for hospitals and (ii) such
5 assurance as he may deem satisfactory from the State
6 agency that such standards will be applied and enforced
7 with respect to any hospital located in the State for
8 which mortgage insurance is provided under this sec-
9 tion; and

10 (2) with respect to a nursing home or intermediate
11 care facility (A) the Secretary shall have received from
12 the State agency designated in accordance with section
13 604 (a) (1) of the Public Health Service Act for the
14 State in which the nursing home or intermediate care
15 facility would be located, a certification that there is a
16 need for such nursing home, or facility, and there are
17 in force in such State or the political subdivision of the
18 State in which the nursing home or intermediate care
19 facility would be located reasonable minimum standards
20 for licensing and for methods of operation for nursing
21 homes or intermediate care facilities; and (B) the Sec-
22 retary has received such assurance as he may deem sat-
23 isfactory from the State agency that such standards will
24 be applied and enforced with respect to any nursing
25 home or intermediate care facility located in the State

1 for which mortgage insurance is provided under this
2 section.

3 (d) The Secretary shall prescribe such regulations as
4 may be necessary to carry out this section, after consulting
5 with the Secretary of Health, Education, and Welfare with
6 respect to any health or medical aspects of the program under
7 this section which may be involved in such regulations.

8 (e) The activities and functions provided for in this sec-
9 tion with respect to the insurance of mortgages covering
10 hospitals shall be carried out by the agencies involved so as
11 to encourage programs that undertake responsibility to pro-
12 vide comprehensive health care, including outpatient and
13 preventive care, as well as hospitalization, to a defined
14 population.

15 **SUPPLEMENTAL PROJECT LOAN**

16 SEC. 504. (a) The Secretary is authorized to insure a
17 supplemental project loan (including advances) with respect
18 to a multifamily project or health facility covered by a mort-
19 gage insured under this title or under the National Housing
20 Act, or covered by a mortgage held by the Secretary, or
21 with respect to a cooperative housing project purchased from
22 the Federal Government by a nonprofit corporation or trust
23 if the property is covered by an uninsured mortgage repre-
24 senting a part of the purchase price. Such loan may be
25 made—

(1) to cover operating losses, where the Secretary determines that the taxes, interest on the original mortgage debt covering the project, mortgage insurance premium, hazard insurance premiums, and the expense of maintenance and operation of the project during the first two years following completion of the project exceed the income of such project;

(2) to finance repairs, improvements, or additions to such project and, where a health facility is involved, to finance the purchase, installation, or repair of major equipment to be used in the operation of the facility; and

(3) to finance purchases and resales of cooperative memberships, but such loan shall be made on the condition and agreement of the mortgagor of the cooperative housing project that on resales of membership, the downpayments by the new members shall not be proportionately less than those made on the original sales of such memberships.

(b) A loan covering operating losses shall—

(1) be limited to a term not exceeding the unexpired term of the original mortgage; and

(2) be in an amount not exceeding the operating loss, as determined by the Secretary.

1 (c) A loan financing repairs, improvements, additions,
2 or equipment shall—

3 (1) be limited to 90 per centum (98 per centum
4 in the case of a cooperative mortgagor) of the Secre-
5 tary's estimate of the cost of such repairs, improvements,
6 additions, and equipment; except that where the proj-
7 ect is covered by an insured mortgage, such amount
8 when added to the outstanding balance of the mortgage
9 covering the project, shall not exceed the maximum
10 mortgage amount prescribed under the section of this
11 title providing mortgage insurance for the type of proj-
12 ect involved; and

13 (2) have a maturity satisfactory to the Secretary
14 but not to exceed the remaining term of the mortgage,
15 except that in the case of a cooperative housing project
16 covered by an uninsured mortgage the loan may, in the
17 discretion of the Secretary, have a maturity date up to
18 twenty-five years in excess of the remaining term of the
19 uninsured mortgage, but not to exceed forty years from
20 the date of the loan.

21 (d) A loan to a cooperative to finance the purchase and
22 resale of memberships shall—

23 (1) be limited to an amount which when added to
24 the outstanding balance of the mortgage covering the
25 project does not exceed the maximum mortgage amount

1 prescribed under the section of this title providing mort-
2 gage insurance for the type of project involved; and

3 (2) have a maturity satisfactory to the Secretary,
4 but not to exceed the remaining term of the mortgage.

5 (e) A loan insured under this section shall—

6 (1) be secured in such manner as the Secretary
7 may require; and

8 (2) contain such other terms, conditions, and re-
9 strictions as the Secretary may prescribe.

10 (f) (1) The Secretary is authorized to insure a supple-
11 mental improvement loan (including advances) with respect
12 to any multifamily project which is receiving assistance under
13 section 502 and in which all or substantially all of the dwell-
14 ing units are occupied by elderly families to finance such
15 additions to or improvements of such project as may be nec-
16 essary or appropriate to expand the nondwelling or common
17 facilities of the project to enable elderly families which, while
18 not residing in the project, are so situated in relation to its
19 location as to be able to derive substantial benefits from such
20 facilities. The Secretary shall by regulation establish criteria
21 and standards in accordance with which it can be determined
22 for any multifamily project eligible for assistance under this
23 subsection the area (hereinafter referred to as the “outreach
24 area”) which can reasonably be served by the expansion of
25 the nondwelling or common facilities of the project.

1 (2) For any project with respect to which a loan is in-
2 sured pursuant to this subsection, the Secretary shall deter-
3 mine a subsidy factor for the project. In determining such
4 factor the Secretary shall consider the cost of providing the
5 expanded facilities and the charges which can fairly and
6 equitably be assessed for the use thereof having regard to
7 the incomes of the families in the outreach area which can be
8 expected to use such facilities.

9 (3) The Secretary is authorized to make, and to con-
10 tract to make, periodic assistance payments on behalf of the
11 owner of any project assisted under this subsection. Such
12 payments shall be made under such rules and regulations as
13 the Secretary shall prescribe and shall be based on the sub-
14 sidy factor established for the project under paragraph (2).
15 The aggregate amount of contracts to make such payments
16 shall not exceed amounts approved in appropriation Acts,
17 and payments pursuant to such contracts shall not exceed
18 \$10,000,000 per annum.

19 (4) Elderly families residing in the outreach area of a
20 project who utilize additional facilities provided in connection
21 with such project shall pay reasonable charges for the use
22 thereof. Such charges shall be fixed with a view to assuring
23 that the income derived therefrom will be sufficient, when
24 added to the assistance payments made pursuant to para-

1 graph (3), to pay interest, principal, and related charges
2 accruing on the loan to provide such facilities.

3 (5) As used in this subsection, the term “elderly fam-
4 ilies” has the same meaning as in section 502 (j) .

5 MORTGAGE INSURANCE FOR LAND DEVELOPMENT

6 SEC. 505. (a) For the purposes of this section—

7 (1) The term “land development” means the process
8 of making, installing, or constructing improvements.

9 (2) The term “improvements” means waterlines and
10 water supply installations, sewerlines and sewage disposal
11 installations, steam, gas, and electric lines and installations,
12 roads, streets, curbs, gutters, sidewalks, storm drainage facil-
13 ities, and other installations or work, whether on or off the
14 site, which the Secretary’s deems necessary or desirable to
15 prepare land primarily for residential and related uses or
16 to provide facilities for public or common use. Related uses
17 may include industrial and commercial uses, with sites for
18 such uses to be in proper proportion to the size and scope of
19 the development. The term “improvements” shall not include
20 any building unless it is (i) a building which is needed in
21 connection with a water supply or sewage disposal installa-
22 tion or a steam, gas, or electric line or installation, or (ii) a
23 building, other than a school, which is to be owned and main-
24 tained jointly by the property owners.

1 (b) The Secretary is authorized to insure a mortgage
2 (including advances) which shall—

3 (1) cover the land to be developed and the im-
4 provements to be made, except facilities intended for
5 public use and in public ownership;

6 (2) be executed by a mortgagor, other than a
7 public body, approved by the Secretary;

8 (3) contain repayment provisions satisfactory to
9 the Secretary within such term as the Secretary shall
10 prescribe; and

11 (4) contain such terms and provisions with respect
12 to protection of the security, payment of taxes, delin-
13 quency charges, prepayment, additional and secondary
14 liens, and other matters as the Secretary may in his
15 discretion prescribe.

16 (c) The principal obligation of the mortgage shall not
17 exceed the sum of 80 per centum of the Secretary's esti-
18 mate of the value of the land before development and 90
19 per centum of his estimate of the cost of such development.

20 (d) The land development shall involve improvements
21 that comply with all applicable State and local governmental
22 requirements and with minimum standards approved by the
23 Secretary and shall be undertaken—

24 (1) pursuant to a schedule, conforming to such
25 requirements and procedures as the Secretary may pre-

scribe, that will assure the use of the land for the purposes for which it is to be developed within the shortest reasonable period consistent with the objectives of sound and economic community growth or urban development ; and

(2) in accordance with an overall development plan which (i) has received all governmental approvals required by State or local law or by the Secretary, (ii) is acceptable to the Secretary as providing reasonable assurance that the land development will contribute to good living conditions in the area being developed, and (iii) is consistent with a comprehensive plan which covers, or with comprehensive planning being carried on for, the area in which the land is situated, and which meets criteria established by the Secretary for such plans or planning.

(c) The Secretary shall adopt such requirements as he deems necessary in connection with the land development to encourage the maintenance of a diversified local homebuilding industry, broad participation by builders, including small builders, and the inclusion of a proper balance of housing for families of moderate or low income.

(f) After development of the land, it shall be served by public or private systems for water and sewerage which

1 are consistent with other existing or prospective systems
2 within the area and which are approved by the Secretary.

3 (g) The Secretary may consent to the release or sub-
4 ordination of a part or parts of the mortgaged property
5 from the lien of the mortgage.

6 (h) The Secretary shall adopt such requirements as he
7 determines to be necessary to assure, at reasonable intervals
8 of time during land development, that the amount of the
9 mortgage loan outstanding at each such interval does not
10 exceed with respect to that portion of the land remaining
11 under the lien of the mortgage (1) 80 per centum of the Sec-
12 retary's estimate of the value of such remaining land before
13 development, plus (2) 90 per centum of the actual costs of
14 the development allocated by the Secretary to such remaining
15 land. As used in this section, the term "actual costs" means
16 the costs (exclusive of rebates or discounts) to the mortga-
17 gor of the improvements involved. These costs include amounts
18 paid for labor, materials, construction contracts, land plan-
19 ning, engineers' and architect's fees, surveys, taxes, and in-
20 terest during development, organizational, and legal ex-
21 penses, such allocaiton of general overhead expenses as are
22 acceptable to the Secretary, and other items of expense
23 incidental to development which may be approved by the
24 Secretary. If the Secretary determines there is an identity
25 of interest between the mortgagor and the contractor, there

1 may be included an allowance for the contractor's profit in
2 an amount deemed reasonable by the Secretary.

3 COST CERTIFICATION

4 SEC. 506. (a) The Secretary shall adopt such require-
5 ments as he determines necessary to assure that the amount
6 of any mortgage, loan, or mortgage bond finally endorsed for
7 insurance or for a guarantee under this Act which involves
8 multifamily housing or a health facility does not exceed the
9 approved percentage of (1) the Secretary's approved actual
10 cost of such construction or rehabilitation and (2) the
11 amount of the allowances for the following:

12 (A) The Secretary's estimate of the value of the
13 land or property prior to the beginning of construction;
14 or in case the land included in the property or project
15 is held by the mortgagor under a leasehold or other in-
16 terest less than a fee, such amount as the mortgagor
17 paid for the acquisition of such leasehold or other in-
18 terest but in no event in excess of the Secretary's esti-
19 mate of the fair market value of such leasehold or other
20 interest exclusive of the proposed improvements; or in
21 the case of rehabilitation where the land and improve-
22 ments are to be acquired by the mortgagor and the
23 purchase price thereof is to be financed with part of the
24 proceeds of the mortgage, the purchase price of such
25 land and improvements prior to such repair or rehabili-

1 tation; or in case the land and improvements are owned
2 by the mortgagor subject to an outstanding indebtedness
3 to be refinanced with part of the proceeds of the mort-
4 gage, the amount of such outstanding indebtedness
5 secured by such land and improvements.

6 (B) An amount for profit and risk as prescribed
7 pursuant to section 501 (a) (2), and an amount repre-
8 senting such allocation of general overhead items as are
9 determined by the Secretary to be acceptable and rea-
10 sonable (except where the amount of profit and risk
11 and general overhead is included in a construction con-
12 tract with a lump-sum price).

13 Where a factory manufactured house or major housing com-
14 ponents are furnished by a subcontractor or supplier having
15 an identity of interest with the mortgagor or builder, an
16 amount representing the Secretary's estimate of the market
17 value of such factory manufactured house or major housing
18 components shall be included for purposes of clause (1) of
19 this subsection in lieu of the actual cost of such factory manu-
20 factured house or major components.

21 (b) The Secretary shall require that the mortgagor
22 certify as to the actual cost to the mortgagor of construction
23 or rehabilitation, and may require such additional certifica-
24 tions of actual cost by such other parties as he may consider
25 necessary to carry out the intent of this section. The Secre-

1 tary may exempt from the requirements of this section
2 mortgagors under a mortgage on a property or project
3 designed principally for residential use for twelve or fewer
4 families or where the mortgage amount to be insured or guar-
5 anteed is less than \$250,000. Certifications required pursuant
6 to this section shall be accompanied by such data and rec-
7 ords as the Secretary shall prescribe. Upon approval by the
8 Secretary, the certification required by this section shall be
9 final and incontestable, except for fraud or material misrepre-
10 sentation on the part of the mortgagor.

11 (c) As used in this section—

12 (1) The term “approved percentage” means the
13 percentage figure which, under applicable provisions of
14 this Act, the Secretary is authorized to apply to his
15 estimate of value, cost, or replacement cost, as the case
16 may be, of the property or project to determine the maxi-
17 mum insurable or guaranteeable mortgage amount.

18 (2) The term “actual cost” means the costs (ex-
19 clusive of rebates or discounts) to the mortgagor of the
20 improvements involved. These costs may include
21 amounts paid for labor, materials, construction contracts,
22 engineer’s and architects’ fees, offsite public utilities,
23 streets, organizational and legal expenses, taxes and
24 interest during construction, and other items of expense
25 approved by the Secretary.

1 and the Secretary determines that any amounts thereby
2 saved are fully credited to the mortgagor undertaking the
3 construction or rehabilitation.

4 TITLE VI—INSURANCE CLAIMS

5 HOME MORTGAGE INSURANCE CLAIM SETTLEMENT

6 SEC. 601. (a) To be entitled to receive the benefits of
7 the insurance, where there has been a default in mortgage
8 payments by the mortgagor, a mortgagee holding a home
9 mortgage insured under one of the sections of title IV shall
10 either foreclose the mortgage and take possession of the
11 property within a period of time prescribed by the Secretary
12 and in accordance with regulations issued by the Secretary
13 or (with the consent of the Secretary) otherwise acquire
14 title and possession of such property. Upon acquisition of the
15 property, the mortgagee shall (1) promptly convey to the
16 Secretary title to the property which meets the requirements
17 of rules and regulations of the Secretary in force at the time
18 the mortgage was insured, and which is evidenced in the
19 manner prescribed by such rules and regulations, and (2)
20 assign to him all claims of the mortgagee against the mort-
21 gator or others, arising out of the mortgage transaction or
22 foreclosure proceedings, except such claims as may have
23 been released with the consent of the Secretary. In lieu of
24 obtaining title and conveying title to the Secretary, the mort-
25 gagee may (with the approval of the Secretary) tender title

1 and transfer possession directly from the mortgagor or other
2 appropriate grantor. The Secretary shall pay the mortgagee's
3 insurance claim in an amount equal to the value of the
4 mortgage.

5 (b) For the purposes of this section, the value of the
6 mortgage shall be determined (in accordance with rules and
7 regulations prescribed by the Secretary) by adding to and
8 deducting from the original principal obligation of the mort-
9 gage which was unpaid on the date of the institution of fore-
10 closure proceedings, or on the date of the acquisition of the
11 property after default other than by foreclosure, certain items
12 specified in subsections (c) through (e).

13 (c) There shall be added to such unpaid principal all
14 payments which have been made by the mortgagee for—

15 (1) taxes, ground rents, and water rates, which are
16 liens prior to the mortgage;

17 (2) special assessments which are noted on the
18 application for commitment or which become liens after
19 the insurance of the mortgage;

20 (3) charges for the administration, operation, main-
21 tenance, and repair of community-owned property or
22 the maintenance and repair of the mortgaged property,
23 the obligation for which arises out of a covenant filed for
24 record and approved by the Secretary prior to the in-
25 surance of the mortgage;

1 (4) insurance on the property;

2 (5) mortgage insurance premium;

3 (6) foreclosure, acquisition, and conveyance costs
4 approved by the Secretary, including payments made by
5 the mortgagee for the cost of acquiring the property and
6 conveying and evidencing title to the property to the
7 Secretary;

8 (7) the protection, operation, or preservation of
9 the property (and the Secretary has approved such pay-
10 ments) ; and

11 (8) any taxes imposed upon any deed or any
12 instrument by which the property was acquired by the
13 mortgagee and transferred or conveyed to the Secretary.

14 (d) There shall be deducted from such unpaid princi-
15 pal any amounts received by the mortgagee, after the insti-
16 tution of foreclosure (or after the acquisition of the property
17 by means other than foreclosure) which—

18 (1) were paid on account of the mortgage; or

19 (2) were collected as rental or other income from
20 the property, less reasonable expenses incurred in han-
21 dling the property.

22 (e) With respect to mortgages to which the provisions
23 of sections 302 and 306 of the Soldiers' and Sailors' Civil
24 Relief Act of 1940 apply, there shall be included in the
25 insurance settlement an amount which the Secretary finds

1 to be sufficient to compensate the mortgagee for any loss
2 which it may have sustained on account of interest on
3 debentures by reason of its having postponed the institution
4 of foreclosure proceedings or the acquisition of the property
5 by other means during any part or all of the period of mili-
6 tary service and three months thereafter.

7 (f) Insurance claims shall be paid by the Secretary, in
8 his discretion, with cash or debentures or by a combination
9 of cash and debentures.

10 (g) Where the claim is paid in cash, it shall be in an
11 amount equivalent to the face value of the debentures that
12 would otherwise be issued plus an amount equivalent to the
13 interest which the debentures would have earned, computed
14 to the date to be established pursuant to regulations issued
15 by the Secretary.

16 FOREBEARANCE OF PAYMENTS

17 SEC. 602. With respect to a home mortgage, if the Sec-
18 retary finds, after notice of default, that the default was due
19 to circumstances beyond the control of the mortgagor, he
20 may—

21 (1) approve the request of the mortgagee for an
22 extension of the time for the curing of the default and
23 of the time for commencing foreclosure proceedings or
24 for otherwise acquiring title to the mortgaged property

1 to such time as the Secretary may determine is neces-
2 sary and desirable to enable the mortgagor to complete
3 the mortgage payments. Such extension of time may be
4 beyond the stated maturity of the mortgage. Where
5 there has been an extension of time and there is a sub-
6 sequent foreclosure (or acquisition of the property by
7 other means), the Secretary is authorized to include in
8 the insurance settlement an amount equal to any unpaid
9 mortgage interest; or

10 (2) approve a modification of the terms of the
11 mortgage for the purpose of changing the amortization
12 provisions by recasting, over the remaining term of the
13 mortgage or over such longer period as may be ap-
14 proved by the Secretary, the total unpaid amount then
15 due, as determined by the Secretary. Such modification
16 may become effective currently or become effective upon
17 the termination of an agreed-upon extension of the
18 period for curing the default. The principal amount of
19 the mortgage, as modified, shall be considered to be the
20 "original principal obligation of the mortgage" as that
21 term is used in section 601 for the purpose of computing
22 the total face value of the debentures to be issued or
23 the cash payment to be made by the Secretary to a
24 mortgagee.

1 ACQUISITION OF HOME MORTGAGES TO AVOID

2 FORECLOSURE

3 SEC. 603. (a) Upon receiving notice of the default of
4 a home mortgage, the Secretary (in his discretion and for
5 the purpose of avoiding foreclosure of the mortgage) may
6 consent to the assignment of the defaulted mortgage. Where
7 such an assignment occurs, the mortgagee shall be entitled
8 to receive (in lieu of the insurance benefits prescribed in sec-
9 tion 601) an insurance payment in an amount equal to the
10 unpaid principal balance of the mortgage plus—

11 (1) any unpaid mortgage interest;

12 (2) reimbursement for such costs and attorney's
13 fees as the Secretary finds were properly incurred in
14 connection with the defaulted mortgage and its assign-
15 ment to the Secretary; and

16 (3) any proper advances of funds made by the
17 mortgagee under the provisions of the mortgage.

18 (b) After acquisition of the mortgage by the Secretary,
19 the mortgagee shall have no further rights, liabilities, or
20 obligations with respect to the mortgage.

21 PROJECT MORTGAGE INSURANCE CLAIM SETTLEMENT

22 SEC. 604. (a) The failure of the mortgagor to make
23 any payment due under or provided to be paid by the terms
24 of a project mortgage or loan insured under any section of
25 title V shall be considered a default under such mortgage

1 and, if such default continues for a period of thirty days, the
2 mortgagee shall be entitled to receive the benefits of the
3 insurance as hereinafter provided upon assignment, transfer,
4 and delivery to the Secretary within a period and in accord-
5 ance with rules and regulations to be prescribed by the
6 Secretary of—

7 (1) all rights and interests arising under the mort-
8 gage so in default;

9 (2) all claims of the mortgagee against the mort-
10 gator or others, arising out of the mortgage transaction;

11 (3) all policies of title or other insurance or surety
12 bonds or other guaranties and any and all claims there-
13 under;

14 (4) any balance of the mortgage loan not advanced
15 to or for the account of the mortgagor;

16 (5) any cash or property held by the mortgagee,
17 or to which it is entitled, as deposits made for the
18 account of the mortgagor and which have not been
19 applied in reduction of the principal of the mortgage
20 indebtedness; and

21 (6) all records, documents, books, papers, and ac-
22 counts relating to the mortgage transaction.

23 (b) Insurance claims shall be settled by the Secretary

24 (1) by a payment to the mortgagee which, at the option

1 of the Secretary, shall be in cash or debentures or a com-
2 bination of cash and debentures having a total face value
3 equal to the value of the mortgage and (2) by the issuance
4 to the mortgagee of a certificate of claim as provided in
5 subsection (e). Where the claim is paid in cash, it shall
6 be in an amount equivalent to the face value of the deben-
7 tures that would otherwise be issued plus an amount equiv-
8 alent to the interest which the debenture would have
9 earned, computed to a date to be established pursuant to
10 regulations issued by the Secretary. For the purposes of this
11 section, the value of the mortgage shall be determined by
12 adding and deducting the items specified herein from the
13 original principal face amount of the mortgage as follows:

14 (1) Items to be deducted from the original principal
15 face amount of the mortgage shall be the sum of—

16 (A) that part of the original principal obligation
17 that has been repaid;

18 (B) 1 per centum of the unpaid balance of the
19 original principal obligation, except that the Secretary
20 may waive all or a part of the 1 per centum deduction,
21 where the assignment is made at his request in lieu of
22 foreclosure of the mortgage;

23 (C) net income received by the mortgagee from
24 the property; and

25 (D) any balance of the mortgage loan not advanced

1 to or for the account of the mortgagor and which is not
2 delivered to the Secretary.

3 (2) Items to be added to the original principal face
4 amount of the mortgage shall be the sum of such amounts as
5 the mortgagee may have paid for—

6 (A) taxes, special assessments, and water rates,
7 which are liens prior to the mortgage;

8 (B) insurance on the property;

9 (C) reasonable expenses for the completion and
10 preservation of the property; and

11 (D) mortgage insurance premium.

12 (c) At the option of the mortgagee, in the event of a
13 default under the mortgage, and in a period to be established
14 by regulations of the Secretary, the mortgagee may foreclose
15 on and obtain possession of or otherwise acquire the mort-
16 gaged property and convey title to the property to the Secre-
17 tary. The mortgagee shall also assign to him all claims of
18 the mortgagee against the mortgagor or others, arising out
19 of the mortgage transaction or foreclosure proceedings, except
20 such claims that may have been released with the consent
21 of the Secretary. Upon such conveyance and assignment, the
22 mortgagee shall be entitled to receive the benefits of the
23 insurance as provided in subsection (b), except that the 1
24 per centum deduction, set out in subsection (b) (1) (B),
25 shall not apply.

1 (d) In lieu of the amount of insurance benefits com-
2 puted pursuant to subsection (b), the Secretary, in his dis-
3 cretion, may (with respect to a mortgage loan acquired by
4 him) compute and pay insurance benefits to the mortgagee
5 in a total amount equal to the unpaid principal balance of the
6 loan plus any accrued interest and any advances approved
7 by the Secretary and made previously by the mortgagee
8 under the provisions of the mortgage.

9 (e) The certificate of claim issued under this section
10 shall be for an amount which the Secretary determines to be
11 sufficient, when added to the face value of the debentures
12 issued and the cash paid to the mortgagee, to equal the
13 amount which the mortgagee would have received if, on the
14 date of the assignment, transfer and delivery to the Secre-
15 tary provided for in subsection (a), or conveyance as pro-
16 vided for in subsection (c), the mortgagor had extinguished
17 the mortgage indebtedness by payment in full or all obliga-
18 tions under the mortgage and a reasonable amount for neces-
19 sary expenses incurred by the mortgagee in connection with
20 the foreclosure proceedings (or the acquisition of the mort-
21 gaged property otherwise) and the conveyance thereof to
22 the Secretary or incurred by the mortgagee in connection
23 with the assignment of the mortgage to the Secretary. Each
24 such certificate of claim shall provide that there shall accrue
25 to the holder of such certificate with respect to the face

1 amount of such certificate, an increment at the rate of 3
2 per centum per annum which shall not be compounded. If
3 the net amount realized from the final liquidation of the
4 mortgage, and all claims in connection therewith, so assigned,
5 transferred, and delivered, and from the property covered
6 by such mortgage and all claims in connection with such
7 property and from any mortgage taken in the sale of such
8 property (after deducting all expenses incurred by the Sec-
9 retary in handling, dealing with, acquiring title to, and dis-
10 posing of such mortgage and property and in collecting such
11 claims) exceeds the face value of the debentures issued and
12 the cash adjustment paid to the mortgagee plus all interest
13 paid on such debentures, such excess shall be divided as
14 follows:

15 (1) If such excess is greater than the total amount pay-
16 able under the certificate of claim issued in connection with
17 such property, the Secretary shall pay to the holder of such
18 certificate the full amount so payable, and any excess re-
19 maining thereafter shall be retained by the Secretary and
20 credited to the appropriate insurance fund.

21 (2) If such excess is equal to or less than the total
22 amount payable under such certificate of claim, the Secre-
23 tary shall pay to the holder of such certificate the full amount
24 of such excess.

1 MODIFICATIONS IN TERMS OF PROJECT MORTGAGES

2 SEC. 605. (a) The Secretary shall not consent to any
3 request for an extension of the time for curing a default under
4 any insured project mortgage or project mortgage held by
5 him or for a modification of the terms of such mortgage,
6 except in conformity with regulations prescribed by the Sec-
7 retary in accordance with the provisions of this section. Such
8 regulations shall require, as a condition to the granting of
9 any such request, that, during the period of such extension
10 or modification, any part of the rents or other funds derived
11 by the mortgagor from the property covered by the mort-
12 gage which is not required to meet actual and necessary
13 expenses arising in connection with the operation of such
14 property, including amortization charges under the mort-
15 gage, be held in trust by the mortgagor and distributed only
16 with the consent of the Secretary; except that the Secretary
17 may provide for the granting of consent to any request for an
18 extension of the time for curing a default under any project
19 mortgage or for a modification of the terms of such mort-
20 gage, without regard to the foregoing requirement, where an
21 exemption from such requirement does not (as determined
22 by the Secretary) jeopardize the interests of the United
23 States.

24 (b) Whoever, as an owner of a property which is
25 security for a mortgage described in subsection (a), or as

1 a stockholder of a corporation owning such property, or as
2 a beneficial owner under any business organization owning
3 such property, or as an officer, director, or agent of any such
4 owner, (1) willfully uses or authorizes the use of any part
5 of the rents or other funds derived from property covered
6 by such mortgage in violation of a regulation prescribed by
7 the Secretary under subsection (a), or (2) if such mortgage
8 is determined, as provided in subsection (a), to be exempt
9 from the requirements of any such regulation or is not other-
10 wise covered by such regulation, willfully uses or authorizes
11 the use, while such mortgage is in default, of any part of
12 the rents or other funds derived from the property covered
13 by such mortgage for any purpose other than to meet actual
14 and necessary expenses arising in connection with such
15 property (including amortization charges under the mort-
16 gage), shall be fined not more than \$5,000 or imprisoned
17 not more than three years, or both.

18 SETTLEMENT OF INSURANCE CLAIMS WITH DEBENTURES

19 SEC. 606. (a) The debentures issued by the Secretary
20 in settlement of insurance claims shall be in registered form
21 and in denominations which are multiples of \$50, shall be
22 subject to such terms and conditions, and shall include such
23 provisions for redemption, as may be prescribed by the Sec-
24 retary with the approval of the Secretary of the Treasury.

1 (b) The debentures shall be issued in the name of the
2 applicable insurance fund carrying the insurance obligations
3 with respect to the mortgage or loan. They shall be signed
4 by the Secretary using either his written or engraved signa-
5 ture, and shall be negotiable.

6 (c) The debentures shall be dated as of the date of
7 default or as of such later date as the Secretary, in his dis-
8 cretion, may establish by regulation.

9 (d) Debentures shall bear interest at the rate in effect
10 on the date the commitment to insure the mortgage or loan
11 was issued, or the date the mortgage or loan was endorsed
12 for insurance, or (when there are two or more insurance
13 endorsements) the date the mortgage or loan was initially
14 endorsed for insurance, whichever rate is the highest.

15 (e) The interest rate to be used in debentures shall be
16 established by the Secretary, from time to time, in an amount
17 not in excess of an annual rate determined by the Secretary
18 of the Treasury taking into consideration the current average
19 market yield on outstanding marketable obligations of the
20 United States with remaining periods to maturity compa-
21 rable to the average maturities of such debentures.

22 (f) The interest on debentures shall be payable semi-
23 annually on the 1st day of January and the 1st day of July

1 of each year. They shall mature twenty years after the issu-
2 ance date, except that debentures issued to pay claims under
3 section 505 may, in the discretion of the Secretary, mature
4 ten years after the issuance date.

5 (g) The principal and interest of the debentures shall
6 be exempt from all taxation (except surtaxes, estate, in-
7 heritance, and gift taxes) now or hereafter imposed by any
8 territory, dependency, or possession of the United States, or
9 by any State, county, municipality, or local taxing authority.

10 (h) The debentures shall be redeemed and paid out of
11 the insurance fund under which they are issued and such
12 fund shall be primarily liable for such payment. They shall
13 be fully and unconditionally guaranteed as to principal and
14 interest by the United States, and such guaranty shall be
15 expressed on the face of the debentures. In the event pay-
16 ment of principal or interest due on any debenture is not
17 made, upon demand, from the obligated insurance fund, the
18 Secretary of the Treasury shall pay the holders the amount
19 thereof. Such amount is hereby authorized to be appropriated
20 out of any money in the Treasury not otherwise appropri-
21 ated, and thereupon, to the extent of the amount so paid,
22 the Secretary of the Treasury shall succeed to all the rights
23 of the holders of such debentures.

TITLE VII—MISCELLANEOUS

GENERAL AUTHORIZATION FOR DEALING WITH AND
DISPOSING OF PROPERTY

SEC. 701. (a) The Secretary shall have the power, under regulations to be prescribed by him and approved by the Secretary of the Treasury—

(1) to assign or sell at public or private sale, or otherwise dispose of, any evidence of debt, contract, claim, personal property, or security held by him pursuant to the provisions of this Act; and

(2) to collect or compromise all obligations assigned to or held by him and all legal or equitable rights accruing to him pursuant to the provisions of this Act until such time as such obligations may be referred to the Attorney General for suit or collection.

(b) The Secretary shall have the power to deal with, complete, rent, renovate, modernize, insure, or sell for cash or credit, in his discretion, any properties conveyed to him under the provisions of this Act. Section 3709 of the Revised Statutes shall not be construed to apply to any contract for hazard insurance, or to any purchase or contract for services or supplies on account of such property if the amount thereof does not exceed \$2,500.

(c) The power to convey and to execute in the name of the Secretary deeds of conveyance, deeds of release, assign-

1 ments and satisfactions of mortgages, and any other written
2 instrument relating to real or personal property or any in-
3 terest therein acquired by the Secretary pursuant to the pro-
4 visions of this Act, may be exercised by an officer appointed
5 by the Secretary, without the execution of any express dele-
6 gation of power or power of attorney. The Secretary may
7 delegate such power by order or by power of attorney, in his
8 discretion, to any officer, agent, or employee he may appoint.

9 A conveyance or transfer of title to real or personal property
10 or an interest therein to the Secretary, his successors and
11 assigns (without identifying the Secretary therein) shall be
12 deemed a proper conveyance or transfer to the same extent
13 and of like effect as if the Secretary were personally named
14 in such conveyance or transfer.

15 (d) Nothing contained in this Act shall be construed
16 to exempt any real property acquired and held by the Secre-
17 tary under this Act from taxation by any State or political
18 subdivision thereof, to the same extent, according to its value,
19 as other real property is taxed.

20 ACQUISITION OF TITLE BY THE SECRETARY

21 SEC. 702. The Secretary is authorized, with respect to
22 any property covered by a mortgage held by him or security
23 for a loan held by him, either (1) to acquire possession and
24 title by voluntary conveyance in extinguishment of loan
25 indebtedness, or (2) to institute proceedings for foreclosure

1 and prosecute such proceedings to conclusion. The Secretary
2 at any sale under foreclosure may, in his discretion for the
3 protection of the appropriate insurance fund, bid any sum
4 up to but not in excess of the total unpaid indebtedness
5 secured by the mortgage or security, plus taxes, insurance,
6 foreclosure costs, fees, and other expenses, and may become
7 the purchaser of the property at such sale. Pending such
8 acquisition by voluntary conveyance or by foreclosure, the
9 Secretary is authorized, with respect to any mortgage or
10 security assigned to him to exercise all the rights of a mort-
11 gagee or lender under such mortgage or security, including
12 the right to sell such mortgage or security, and to take such
13 action and advance such sums as may be necessary to pre-
14 serve or protect the lien of such mortgage or security.

15 INSURANCE FOR MORTGAGES SOLD OR EXECUTED IN CON-
16 NECTION WITH THE SALE OF PROPERTY BY THE
17 SECRETARY

18 SEC. 703. The Secretary is authorized to insure under
19 any section of this Act any mortgage assigned to him in
20 connection with payment under a contract of insurance
21 which he subsequently sells or any mortgage executed in
22 connection with the sale by him of any property acquired
23 under any section of this Act or under any section or title
24 of the National Housing Act. This authority may be exer-
25 cised without regard to any limitations or requirements

1 contained in this Act upon the eligibility of the mortgage
2 for insurance, upon the payment of insurance premiums, or
3 upon the terms and conditions of insurance settlement and
4 the benefits of the insurance to be included in such settlement.

5 EXPENDITURES TO CORRECT OR COMPENSATE FOR STRUC-
6 TURAL DEFECTS IN MORTGAGED HOMES AND EXPERI-
7 MENTAL PROPERTY

8 SEC. 704 (a) The text of section 518 of the National
9 Housing Act is amended to read as follows:

10 “SEC. 518. (a) The Secretary is authorized with re-
11 spect to any property improved by a one- to four-family
12 dwelling approved for mortgage insurance prior to the begin-
13 ning of construction, which he finds to have structural defects,
14 to make expenditures for (1) correcting such defects, (2)
15 paying the claims of the owner of the property arising from
16 such defects, (3) acquiring title to the property: *Provided*,
17 That such authority of the Secretary shall exist only (A) if
18 the owner has requested assistance from the Secretary not
19 later than four years (or such shorter time as the Secretary
20 may prescribe) after insurance of the mortgage, and (B)
21 if the property is encumbered by a mortgage which is in-
22 sured under this Act after the date of enactment of the Hous-
23 ing Act of 1964.

24 “(b) If the owner of any one- to four-family dwelling
25 which is covered by a mortgage insured under section 203,

1 221, or 235 and which is more than one year old on the date
2 of the issuance of the insurance commitment, makes applica-
3 tion to the Secretary not more than one year after the insur-
4 ance of the mortgage (or, in the case of a dwelling covered
5 by a mortgage the insurance commitment for which was
6 issued on or after August 1, 1968, but prior to the date of
7 the enactment of this provision, one year after the date of
8 the enactment of such provision) to correct any structural
9 or other defect of the dwelling which seriously affects its use
10 and livability, or which is attributable to failure of the
11 dwelling to meet applicable State laws or local regulations
12 relating to the public health or safety or which constitutes a
13 violation of the minimum property standards promulgated by
14 the Federal Housing Administration, the Secretary shall,
15 with all reasonable promptness not to exceed forty-five days,
16 make expenditures for any of the purposes specified in sub-
17 section (a), unless the defect is one that did not exist on the
18 date of the issuance of the insurance commitment or is one
19 that a proper inspection could not reasonably have been ex-
20 pected to disclose. The Secretary may require from the seller
21 of any such dwelling an agreement to reimburse him for any
22 payments made pursuant to this subsection with respect to
23 such dwelling.

24 “(c) The Secretary shall by regulations prescribe the

1 terms and conditions under which expenditures and pay-
2 ments may be made under the provisions of this section.

3 “(d) The Secretary shall take all steps necessary to
4 notify owners of the provisions of this section and section 801
5 of the Housing Act of 1954 including notification by certified
6 mail. If an owner fails to make application for reimburse-
7 ment within the time set by this section and if his failure is
8 the result of his not having received notification from the
9 Secretary, the deadline for his application shall be extended
10 to include a reasonable period of time after he actually re-
11 ceived notification from the Secretary.”

12 PENALTIES

13 SEC. 705. (a) The Secretary is authorized to refuse
14 the benefits of participation (either directly as an insured
15 lender or as a borrower, or indirectly as a builder, contractor
16 or dealer, or salesman or sales agent for a builder, contractor
17 or dealer) under any of the provisions of this Act to any
18 person or firm (including but not limited to any individual,
19 partnership, association, trust, or corporation) if the Secre-
20 tary has determined that such person or firm—

21 (1) has knowingly or willfully violated any pro-
22 vision of this Act, of the National Housing Act, or of
23 title III of the Servicemen's Readjustment Act of 1944,
24 or of chapter 37 of title 38, United States Code, or of

1 any regulation issued by the Secretary under this Act or
2 under the National Housing Act, or by the Adminis-
3 trator of Veterans' Affairs under said title III, or chap-
4 ter 37; or

5 (2) has, in connection with any construction, alter-
6 ation, repair or improvement work financed with assist-
7 ance under this Act or under the National Housing
8 Act, or under said title III, or chapter 37, or in con-
9 nection with contracts or financing relating to such work,
10 violated any Federal or State penal statute; or

11 (3) has failed materially to carry out properly con-
12 tractual obligations with respect to the completion of
13 construction, alteration, repair, or improvement work
14 financed with assistance under this Act or under the
15 National Housing Act, or under title III of the Serv-
16 icemen's Readjustment Act of 1944, or chapter 37 of
17 title 38, United States Code.

18 (b) Before the determination prescribed in subsection

19 (a) is made, any person or firm with respect to which a
20 determination is proposed shall be notified in writing by the
21 Secretary and shall be entitled (upon making a written re-
22 quest to the Secretary) to—

23 (1) a written notice specifying charges in reason-
24 able detail; and

1 (2) an opportunity to be heard and to be repre-
2 sented by counsel.

3 (c) Any person aggrieved by a determination of the
4 Secretary pursuant to this section may, within sixty days
5 after notice of such determination, file a petition of review
6 in the court of appeals for the circuit in which the property
7 involved is located. Judicial review shall be confined to the
8 record made in the hearing before the Secretary and the
9 Secretary's findings of fact shall be conclusive if supported by
10 the preponderance of the evidence.

11 (d) For the purposes of compliance with this section,
12 the Secretary's notice of a proposed determination or a de-
13 termination under this section shall be considered to have
14 been received by the interested person or firm if the notice
15 is properly mailed to the last known address of such person
16 or firm.

17 TRANSITION BETWEEN THE NATIONAL HOUSING ACT
18 AND THE REVISED NATIONAL HOUSING ACT

19 SEC. 102. The provisions of this chapter shall be effec-
20 tive, in whole or in part, at such date or dates as the Secretary
21 of Housing and Urban Development shall prescribe, and the
22 Secretary shall establish procedures for the orderly transfer of
23 mortgage insurance operations from the authority of the
24 National Housing Act to the authority of the Revised Na-

1 tional Housing Act in order to assure continuity of efficient
2 program activity and to provide adequate opportunity for
3 necessary administrative and legislative revisions.

4 EXPERIMENTAL DUAL INTEREST RATE SYSTEM

5 SEC. 103. (a) Notwithstanding any maximum interest
6 rate established by the Secretary of Housing and Urban
7 Development pursuant to section 4 of the Revised National
8 Housing Act, the Secretary is authorized, pursuant to com-
9 mitments issued prior to July 1, 1975, to insure mortgages,
10 under any provisions of such Act he deems appropriate, at
11 whatever interest rate may be agreed upon by the mortgagor
12 and mortgagee if the mortgagee establishes to the satisfaction
13 of the Secretary that it has made no charges, either directly
14 or indirectly, in the nature of discounts or points in connec-
15 tion with the mortgage transaction.

16 (b) The Secretary shall take appropriate steps to assure
17 that prospective mortgagors have adequate information as to
18 the alternative methods for establishing interest rates pur-
19 suant to this section and section 4 of the Revised National
20 Housing Act.

21 CONFORMING AND TECHNICAL AMENDMENTS

22 SEC. 104. (a) Any reference in any Federal, State, or
23 local law to the National Housing Act shall be construed to
24 refer also to the Revised National Housing Act and any ref-
25 erence in such Federal, State, or local law to a particular

1 provision of the National Housing Act shall be construed to
2 refer also to the provision of the Revised National Housing
3 Act which corresponds in purpose and function to such pro-
4 vision of the National Housing Act.

5 (b) Section 2 (a) of the National Housing Act is
6 amended by inserting “or under title III of the Revised
7 National Housing Act” immediately after “under this sec-
8 tion” in the second sentence of the first paragraph.

9 (c) Section 213 (l) of the National Housing Act is
10 amended by inserting “or under section 501 of the Revised
11 National Housing Act where the mortgagor is a cooperative”
12 immediately after “under this section” in the third sentence
13 thereof.

14 (d) Section 312 (c) (4) (A) of the Housing Act of
15 1964 is amended to read as follows:

16 “(A) in the case of residential property, the lesser
17 of (i) the appropriate prototype cost for the area as
18 determined under section 3 of the Revised National
19 Housing Act; or (ii) the estimated cost of rehabilitation
20 plus, where the Secretary approves refinancing, the
21 amount (as determined by the Secretary) required to
22 refinance existing indebtedness secured by the property:
23 *Provided*, That the amount of the loan for rehabilitation
24 shall be limited to an amount which when added to any
25 outstanding indebtedness related to the property, creates

1 a total outstanding indebtedness which does not exceed
2 (i) in the case of owner-occupied property (1) 97 per
3 centum of \$15,000 of the sum of the estimated cost of
4 rehabilitation and the Secretary's estimate of the value
5 of the property before rehabilitation, and (2) 90 per
6 centum of such sum in excess of \$15,000; and (ii) in
7 the case of property which is not owner-occupied, 90
8 per centum of the sum of the estimated cost of rehabili-
9 tation and the Secretary's estimate of the value of the
10 property before rehabilitation; and".

11 Chapter II—PUBLIC HOUSING ASSISTANCE

12 PROGRAM

13 SEC. 201. The United States Housing Act of 1937 is
14 amended to read as follows:

15 "SHORT TITLE

16 "SECTION 1. This Act may be cited as the 'United
17 States Housing Act of 1937'.

18 "DECLARATION OF POLICY

19 "SEC. 2. It is the policy of the United States to pro-
20 mote the general welfare of the Nation by employing its
21 funds and credit, as provided in this Act, to assist the sev-
22 eral States and their political subdivisions to remedy the
23 unsafe and unsanitary housing conditions and the acute
24 shortage of decent, safe, and sanitary dwellings for families
25 of low income and, consistent with the objectives of this Act,

1 to vest in local public housing agencies the maximum amount
2 of responsibility in the administration of their housing pro-
3 grams. It is the sense of the Congress that no person should
4 be barred from serving on the board of directors or similar
5 governing body of a local public housing agency because
6 of his tenancy in a low-income housing project.

7 "DEFINITIONS

8 "SEC. 3. When used in this Act—

9 "(1) The term 'low-income housing' means decent, safe,
10 and sanitary dwellings within the financial reach of families
11 of low income, and embraces all necessary appurtenances
12 thereto. Except as otherwise provided in sections 8 and 9 of
13 this Act, income limits for occupancy and rents shall be
14 fixed by the public housing agency and approved by the
15 Secretary. The rental for any dwelling unit shall not exceed
16 one-fourth of the family's income as defined by the Secre-
17 tary. In no case shall the rental for any dwelling unit be
18 less than an amount equal to 40 per centum of the operating
19 costs attributable to the dwelling unit, including the cost of
20 project-supplied utilities. If the Secretary determines that the
21 application of the preceding sentence in any area would re-
22 sult in undue hardship because of unusually high utility or
23 other operating costs prevailing seasonally or otherwise, he
24 may make an appropriate adjustment in such rental. The
25 rental of any dwelling unit occupied by a family receiving

1 welfare assistance payments shall not exceed the greater of
2 (A) 40 per centum of the operating costs attributable to the
3 dwelling unit, including the cost of project-supplied utilities,
4 or (B) the maximum amount of welfare assistance which
5 that family receives from such agency for the specific purpose
6 of assisting that family in meeting its housing expenses. The
7 occupancy of any project shall be limited to families who
8 at the time of entry into the project are low-income families,
9 except that to the maximum extent possible, in each project
10 there shall be a reasonable cross section of income levels of
11 tenants within the low-income range. At least 20 per centum
12 of the dwelling units in any project placed under annual con-
13 tributions contracts in any fiscal year after the effective date
14 of this section shall be occupied by very low-income families.
15 In defining the income of any family for the purpose of this
16 Act, the Secretary shall consider income from all sources of
17 each member of the family residing in the household, except
18 that there shall be excluded—

19 “(A) the income of any family member (other
20 than the head of the household or his spouse) who is
21 under eighteen years of age or is a full-time student;

22 “(B) the first \$300 of the income of a secondary
23 wage earner who is the spouse of the head of the house-
24 hold;

25 “(C) an amount equal to \$300 for each member of

1 the family residing in the household (other than the
2 head of the household or his spouse) who is under
3 eighteen years of age or who is eighteen years of age
4 or older and is disabled or handicapped or a full-time
5 student, and has no income included in family income
6 for purposes of this section;

7 “(D) nonrecurring income, as determined by the
8 Secretary;

9 “(E) extraordinary medical or other expenses as
10 the Secretary approves for exclusion; and

11 “(F) an amount equal to the sums received by the
12 head of the household or his spouse from, or under the
13 direction of, any public or private nonprofit child plac-
14 ing agency for the care and maintenance of one or more
15 persons who are under eighteen years of age and were
16 placed in the household by such agency.

17 “(2) The term ‘low-income families’ means families
18 of low income who cannot afford to pay enough to cause
19 private enterprise in their locality or metropolitan area to
20 build an adequate supply of decent, safe, and sanitary dwell-
21 ings for their use. The term ‘very low-income families’ means
22 families in the lowest income group, as determined by the
23 Secretary. The term ‘families’ includes families consisting of
24 a single person in the case of elderly families and displaced
25 families, and includes the remaining member of a tenant fam-

1 ily. The term 'elderly families' means families whose heads
2 (or their spouses), or whose sole members, are at least fifty
3 years of age, or are under a disability as defined in section
4 223 of the Social Security Act, or are handicapped. A per-
5 son shall be considered handicapped if such person is deter-
6 mined, pursuant to regulations issued by the Secretary, to
7 have a physical impairment which (A) is expected to be
8 of long-continued and indefinite duration, (B) substantially
9 impedes his ability to live independently, and (C) is of such
10 a nature that such ability could be improved by more suit-
11 table housing conditions. The term 'displaced families' means
12 families displaced by governmental action, or families whose
13 present or former dwellings are situated in areas determined
14 by the Small Business Administration, subsequent to April 1,
15 1965, to have been affected by a natural disaster, and which
16 have been extensively damaged or destroyed as the result of
17 such disaster.

18 “(3) The term 'development' means any or all under-
19 takings necessary for planning, land acquisition, demolition,
20 construction, or equipment, in connection with a low-income
21 housing project. The term 'development cost' shall comprise
22 the cost incurred by a public housing agency in such under-
23 takings and their necessary financing (including the pay-
24 ment of carrying charges), and in otherwise carrying out
25 the development of such project. Construction activity in

1 connection with a low-income housing project may be con-
2 fined to the reconstruction, remodeling, or repair of existing
3 buildings.

4 “(4) The term ‘operation’ means any or all under-
5 takings appropriate for management, operation, services,
6 maintenance, or financing in connection with a low-income
7 housing project. The term also means the financing of tenant
8 programs and services for families residing in low-income
9 housing projects, particularly where there is maximum
10 feasible participation of the tenants in the development and
11 operation of such tenant programs and services. As used in
12 this paragraph, the term ‘tenant programs and services’
13 includes the development and maintenance of tenant organi-
14 zations which participate in the management of low-income
15 housing projects; the training of tenants to manage and
16 operate such projects and the utilization of their services in
17 project management and operation; counseling on household
18 management, housekeeping, budgeting, money management,
19 child care, and similar matters; advice as to resources for job
20 training and placement, education, welfare, health, and other
21 community services; services which are directly related to
22 meeting tenant needs and providing a wholesome living
23 environment; and referral to appropriate agencies when nec-
24 essary for the provision of such services. To the maximum
25 extent available and appropriate, existing public and private

1 agencies in the community shall be used for the provision of
2 such services.

3 “(5) The term ‘acquisition cost’ means the amount
4 prudently required to be expended by a public housing
5 agency in acquiring a low-income housing project.

6 “(6) The term ‘public housing agency’ means any
7 State, county, municipality, or other governmental entity or
8 public body (or agency or instrumentality thereof) which is
9 authorized to engage in or assist in the development or oper-
10 ation of low-income housing.

11 “(7) The term ‘State’ includes the several States, the
12 District of Columbia, the Commonwealth of Puerto Rico, the
13 territories and possessions of the United States, the Trust
14 Territory of the Pacific Islands, and Indian tribes, bands,
15 groups, and Nations, including Alaska Indians, Aleuts, and
16 Eskimos, of the United States.

17 “(8) The term ‘Secretary’ means the Secretary of
18 Housing and Urban Development.

19 “(9) The terms ‘low-income housing project’ or ‘proj-
20 ect’ mean (A) any low-income housing developed, acquired,
21 or assisted by a public housing agency under this Act, and
22 (B) the improvement of any such housing.

23 “LOANS FOR LOW-INCOME HOUSING PROJECTS

24 “SEC. 4. (a) The Secretary may make loans or com-
25 mitments to make loans to public housing agencies to help

1 finance or refinance the development, acquisition, or opera-
2 tion of low-income housing projects by such agencies. Any
3 contract for such loans and any amendment to a contract for
4 such loans shall provide that such loans shall bear interest at
5 a rate specified by the Secretary which shall not be less
6 than a rate determined by the Secretary of the Treasury
7 taking into consideration the current average market yield
8 on outstanding marketable obligations of the United States
9 with remaining periods to maturity comparable to the av-
10 erage maturities of such loans, plus one-eighth of 1 per
11 centum. Such loans shall be secured in such manner and
12 shall be repaid within such period not exceeding forty years
13 or not exceeding forty years from the date of the bonds
14 evidencing the loan, as the Secretary may determine. The
15 Secretary may require loans or commitments to make loans
16 under this section to be pledged as security for obligations
17 issued by a public housing agency in connection with a low-
18 income housing project.

19 “(b) The Secretary may issue and have outstanding at
20 any one time notes and other obligations for purchase by the
21 Secretary of the Treasury in an amount which will not,
22 unless authorized by the President, exceed \$1,500,000,000,
23 For the purpose of determining obligations incurred to make
24 loans pursuant to this Act against any limitation otherwise

1 applicable with respect to such loans, the Secretary shall
2 estimate the maximum amount to be loaned at any one time
3 pursuant to loan agreements, then outstanding with public
4 housing agencies. Such notes or other obligations shall be in
5 such forms and denominations and shall be subject to such
6 terms and conditions as may be prescribed by the Secretary
7 with the approval of the Secretary of the Treasury. The
8 notes or other obligations issued under this subsection shall
9 have such maturities and bear such rate or rates of interest
10 as shall be determined by the Secretary of the Treasury.
11 The Secretary of the Treasury is authorized and directed to
12 purchase any notes or other obligations of the Secretary
13 issued hereunder and for such purpose is authorized to use as
14 a public debt transaction the proceeds from the sale of any
15 securities issued under the Second Liberty Bond Act, as
16 amended, and the purposes for which securities may be
17 issued under such Act, as amended, are extended to include
18 any purchases of such obligations. The Secretary of the
19 Treasury may at any time sell any of the notes or other
20 obligations acquired by him under this section. All redemp-
21 tions, purchases, and sales by the Secretary of the Treasury
22 of such notes or other obligations shall be treated as public
23 debt transactions of the United States.

1 "ANNUAL CONTRIBUTIONS FOR LOW-INCOME HOUSING
2 PROJECTS

3 "SEC. 5. (a) The Secretary may make annual contri-
4 butions to public housing agencies to assist in achieving and
5 maintaining the low-income character of their projects. The
6 Secretary shall embody the provisions for such annual con-
7 tributions in a contract guaranteeing their payment. The
8 contribution payable annually under this section shall in no
9 case exceed a sum equal to the annual amount of principal
10 and interest payable on obligations issued by the public
11 housing agency to finance the development or acquisition
12 cost of the low-income project involved. The amount of
13 annual contributions which would be established for a newly
14 constructed project by a public housing agency designed to
15 accommodate a number of families of a given size and kind
16 may be established under this section for a project by such
17 public housing agency which would provide housing for
18 the comparable number, sizes, and kinds of families through
19 the acquisition and rehabilitation, or use under lease
20 of structures which are suitable for low-income housing
21 use and obtained in the local market. Annual contribu-
22 tions payable under this section shall be pledged, if the
23 Secretary so requires, as security for obligations issued by

1 a public housing agency to assist the development or acqui-
2 sition of the project to which annual contributions relate
3 and shall be paid over a period not to exceed forty years.

4 “(b) The Secretary may prescribe regulations fixing
5 the maximum contributions available under different cir-
6 cumstances, giving consideration to cost, location, size, rent-
7 paying ability of prospective tenants, or other factors bear-
8 ing upon the amounts and periods of assistance needed to
9 achieve and maintain low rentals. Such regulations may
10 provide for rates of contribution based upon development,
11 acquisition, or operation costs, number of dwelling units,
12 number of persons housed, interest charges, or other appro-
13 priate factors.

14 “(c) The Secretary is authorized to enter into con-
15 tracts for annual contributions aggregating not more than
16 \$1,199,000,000 per annum, which limit shall be increased
17 by \$225,000,000 on July 1, 1971, by \$300,000,000 on
18 July 1, 1972, by \$140,000,000 on July 1, 1973, by \$250,-
19 000,000 on July 1, 1974, and by \$250,000,000 on July 1,
20 1975. At least 30 per centum of the dwelling units placed
21 under annual contributions contracts in any fiscal year after
22 the effective date of this section shall be units of low-rent
23 housing in private accommodations provided under section 8
24 of this Act. Of the aggregate amount of contracts for annual
25 contributions authorized in this subsection, the Secretary is

1 authorized to enter into contracts for annual contributions
2 with respect to the modernization of low-income hous-
3 ing projects in an amount aggregating not more than
4 \$100,000,000 per annum. The Secretary shall enter into
5 only such new contracts for preliminary loans as are con-
6 sistent with the number of dwelling units for which con-
7 tracts for annual contributions may be entered into. In
8 administering the authority provided under this section, the
9 Secretary shall assure that public housing agencies have
10 complied with the requirements of section 8(a) (1) con-
11 cerning the provision of low-income housing in private
12 accommodations. The faith of the United States is solemnly
13 pledged to the payment of all annual contributions contracted
14 for pursuant to this section, and there are hereby authorized
15 to be appropriated in each fiscal year, out of any money in
16 the Treasury not otherwise appropriated, the amounts neces-
17 sary to provide for such payments. All payments of annual
18 contributions pursuant to this section shall be made out of
19 any funds available for purposes of this Act when such pay-
20 ments are due, except that funds obtained through the issu-
21 ance of obligations pursuant to section 4(b) (including re-
22 payments or other realizations of the principal of loans made
23 out of such funds) shall not be available for the payment of
24 such annual contributions.

25 “(d) Any contract for loans or annual contributions,

1 or both, entered into by the Secretary with a public housing
2 agency, may cover one or more than one low-income housing
3 project owned by said public housing agency; in the event
4 such contract covers two or more projects, such projects
5 may, for any of the purposes of this Act and of such con-
6 tract (including, but not limit to, the determination of the
7 amount of the loan, annual contributions, or payments in
8 lieu of taxes, specified in such contract), be treated collec-
9 tively as one project.

10 “(e) In recognition that there should be local determi-
11 nation of the need for low-income housing to meet needs not
12 being adequately met by private enterprise—

13 “(1) the Secretary shall not make any contract
14 with a public housing agency for preliminary loans (all
15 of which shall be repaid out of any moneys which be-
16 come available to such agency for the development of
17 the projects involved) for surveys and planning in re-
18 spect to any low-income housing projects (i) unless the
19 governing body of the locality involved has by resolution
20 approved the application of the public housing agency
21 for such preliminary loan; and (ii) unless the public
22 housing agency has demonstrated to the satisfaction of
23 the Secretary that there is need for such low-income
24 housing which is not being met by private enterprise;
25 and

1 “(2) the Secretary shall not make any contract for
2 loans (other than preliminary loans) or for annual con-
3 tributions pursuant to this Act unless the governing body
4 of the locality involved has entered into an agreement
5 with the public housing agency providing for the local
6 cooperation required by the Secretary pursuant to this
7 Act.

8 “(f) Subject to the specific limitations or standards in
9 this Act governing the terms of sales, rentals, leases, loans,
10 contracts for annual contributions, or other agreements, the
11 Secretary may, whenever he deems it necessary or desirable
12 in the fulfillment of the purposes of this Act, consent to the
13 modification, with respect to rate of interest, time of pay-
14 ment of any installment of principal or interest, security,
15 amount of annual contribution, or any other term, of any con-
16 tract or agreement of any kind to which the Secretary is a
17 party. When the Secretary finds that it would promote econ-
18 omy or be in the financial interest of the Federal Government
19 or is necessary to assure or maintain the low-income char-
20 acter of the project or projects involved, any contract here-
21 tofore or hereafter made for annual contributions, loans, or
22 both, may be amended or superseded by a contract of the
23 Secretary. Contracts may not be amended or superseded in a
24 manner which would impair the rights of the holders of any
25 outstanding obligations of the public housing agency involved

1 for which annual contributions have been pledged. Any rule
2 of law contrary to this provision shall be deemed inapplicable.

3 “(g) In addition to the authority of the Secretary under
4 subsection (a) to pledge annual contributions as security for
5 obligations issued by a public housing agency, the Secretary
6 is authorized to pledge annual contributions as a guarantee
7 of payment by a public housing agency of all principal and
8 interest on obligations issued by it to assist the development
9 or acquisition of the project to which annual contributions
10 relate, except that no obligation shall be guaranteed under
11 this subsection if the income thereon is exempt from Federal
12 taxation.

13 “CONTRACT PROVISIONS AND REQUIREMENTS

14 “SEC. 6. (a) The Secretary may include in any contract
15 for loans, annual contributions, sale, lease, mortgage, or any
16 other agreement or instrument made pursuant to this Act,
17 such covenants, conditions, or provisions as he may deem
18 necessary in order to insure the low-income character of the
19 project involved. Any such contract may contain a condition
20 requiring the maintenance of an open space or playground in
21 connection with the housing project involved if deemed nec-
22 essary by the Secretary for the safety or health of children.
23 Any such contract shall require that, except in the case of
24 housing predominantly for the elderly, high-rise elevator
25 projects shall not be provided for families with children un-

1 less the Secretary makes a determination that there is no
2 practical alternative.

3 “(b) Every contract made pursuant to this Act for
4 loans (other than preliminary loans) and annual contribu-
5 tions shall provide that the cost of construction and equip-
6 ment of the project (excluding land, demolition, and non-
7 dwelling facilities) on which the computation of any annual
8 contributions under this Act may be based shall not exceed
9 by more than 10 per centum the appropriate prototype cost
10 for the area. The prototype costs shall be determined at least
11 annually by the Secretary on the basis of his estimate of the
12 construction costs of new dwelling units of various types and
13 sizes in the area suitable for occupancy by persons assisted
14 under this Act. In making his determination the Secretary
15 shall take into account (1) the extra durability required for
16 economical maintenance of such housing, (2) the provision
17 of amenities designed to guarantee a safe and healthy family
18 life and neighborhood environment, (3) the application of
19 good design as an essential component of such housing and
20 maintenance of quality in architecture to reflect the stand-
21 ards of the neighborhood and community, (4) the effective-
22 ness of existing cost limits in the area, and (5) the advice
23 and recommendations of local housing producers. The proto-
24 type costs for any area shall become effective upon the date
25 of publication in the Federal Register.

1 “(c) Every contract for annual contributions shall pro-
2 vide that—

3 “(f) the Secretary may require the public hous-
4 ing agency to review and revise its maximum income
5 limits if the Secretary determines that changed condi-
6 tions in the locality make such revision necessary in
7 achieving the purposes of the Act;

8 “(2) the public housing agency shall determine,
9 and so certify to the Secretary, that each family in the
10 project was admitted in accordance with duly adopted
11 regulations and approved income limits; and that the
12 public housing agency shall review the incomes of fami-
13 lies living in the project at intervals of two years (or at
14 shorter intervals where the Secretary deems it desir-
15 able) ; and

16 “(3) the public housing agency shall promptly
17 notify (i) any applicant determined to be ineligible for
18 admission to the project of the basis for such determina-
19 tion and provide the applicant upon request, within a
20 reasonable time after the determination is made, with
21 an opportunity for an informal hearing on such determi-
22 nation and (ii) any applicant determined to be eligible
23 for admission to the project of the approximate date
24 of occupancy insofar as such date can be reasonably
25 determined.

1 “(d) (1) Every contract for annual contributions shall
2 provide that no annual contributions by the Secretary shall
3 be made available for any project unless such project
4 (exclusive of any portion thereof which is not assisted by
5 annual contributions under this Act) is exempt from all
6 real and personal property taxes levied or imposed by the
7 State, city, county, or other political subdivision, and such
8 contract shall require the public housing agency to make pay-
9 ments in lieu of taxes. In order to facilitate the development
10 of public housing projects in adequate and well-serviced lo-
11 cations, the Secretary may utilize not more than 10 per
12 centum of the annual contributions authority made available
13 on July 1, 1974, under section 5 (c) of this Act, as a demon-
14 stration fund, to provide for payments to States, cities, coun-
15 ties, or other political subdivisions which shall be equal to the
16 amount of taxes which would be paid, except for the ex-
17 emption provided for in the previous sentence, for new public
18 housing projects located within the jurisdiction of any such
19 State, city, county, or subdivision and placed under annual
20 contributions contracts after that date and approved by him
21 for the purpose of this sentence. In no case shall any payment
22 in lieu of taxes under this subsection exceed an amount which
23 the Secretary determines is comparable to the taxes imposed
24 on other residential property in the community in which the
25 project is located.

1 “(2) The Secretary shall cause outstanding contracts for
2 annual contributions to be amended in conformity with the
3 provisions of this subsection. Estimates for the amounts by
4 which such provisions require an increase in the annual con-
5 tributions payable to any public housing agency shall be sub-
6 mitted to the Secretary by such agency not later than six
7 months after the effective date of this section.

8 “(e) Every contract for annual contributions shall pro-
9 vide that whenever in any year the receipts of a public
10 housing agency in connection with a low-income project
11 exceed its expenditures (including debt service, operation,
12 maintenance, establishment of reserves, and other costs and
13 charges), an amount equal to such excess shall be applied,
14 or set aside for application, to purposes which, in the deter-
15 mination of the Secretary, will effect a reduction in the
16 amount of subsequent annual contributions.

17 “(f) Every contract for annual contributions shall pro-
18 vide that when the public housing agency and the Secretary
19 mutually agree that a housing project is obsolete as to physi-
20 cal condition, or location, or other factors, making it un-
21 usable for housing purposes, a program of modifications
22 or closeout shall be prepared. If it is mutually determined
23 that such a housing project can be returned to useful life,
24 then the Secretary is authorized to utilize such annual con-
25 tributions as are necessary to enable the local public housing

1 agency to undertake an agreed-upon program of modifica-
2 tions. If it is mutually determined that no program of modi-
3 fications is feasible or that such a program would not return
4 the housing to a useful life, then the Secretary is authorized
5 to prepare a closeout program, utilizing such annual con-
6 tributions as are necessary to accommodate the outstanding
7 indebtedness on the project, the cost of demolition (if the
8 physical improvements are not to be sold) and the cost of
9 relocating displaced families into satisfactory replacement
10 housing. The net close-out cost to the Federal Government
11 shall take into consideration any receipts from the sale of
12 physical improvements, land, or other assets, pursuant to
13 the provisions of the annual contributions contract.

14 “(g) Every contract for annual contributions (including
15 contracts which amend or supersede contracts previously
16 made) may provide that—

17 “(1) upon the occurrence of a substantial default
18 in respect to the covenants or conditions to which the
19 public housing agency is subject (as such substantial
20 default shall be defined in such contract), the public
21 housing agency shall be obligated at the option of the
22 Secretary, either to convey title in any case where, in
23 the determination of the Secretary (which determination
24 shall be final and conclusive), such conveyance of title
25 is necessary to achieve the purposes of this Act, or to

1 deliver possession to the Secretary of the project, as then
2 constituted, to which such contract relates;

3 “(2) the Secretary shall be obligated to reconvey
4 or to redeliver possession of the project, as constituted
5 at the time of reconveyance or redelivery, to such public
6 housing agency or to its successor (if such public housing
7 agency or a successor exists) upon such terms as shall be
8 prescribed in such contract and as soon as practicable:

9 (i) after the Secretary shall be satisfied that all defaults
10 with respect to the project have been cured, and that
11 the project will, in order to fulfill the purposes of this
12 Act, thereafter be operated in accordance with the terms
13 of such contract; or (ii) after the termination of the
14 obligation to make annual contributions available unless
15 there are any obligations or covenants of the public
16 housing agency to the Secretary which are then in
17 default. Any prior conveyances and reconveyances, de-
18 liveries and redeliveries of possession shall not exhaust
19 the right to require a conveyance or delivery of pos-
20 session of the project to the Secretary pursuant to sub-
21 paragraph (1), upon the subsequent occurrence of a
22 substantial default.

23 Whenever such contract for annual contributions shall in-
24 clude provisions which the Secretary in said contract deter-
25 mines are in accordance with this subsection, and the portion

1 of annual contributions payable for debt service requirements,
2 pursuant to such contract, have been pledged by the public
3 housing agency as security for the payment of the principal
4 and interest on any of its obligations, the Secretary
5 (notwithstanding any other provisions of this Act) shall
6 continue to make such annual contributions available
7 for the project so long as any of such obligations remain
8 outstanding, and may covenant in such contract that in
9 any event such annual contributions shall in each year
10 be at least equal to an amount which, together with such
11 income or other funds as are actually available from the
12 project for the purpose at the time such annual contribu-
13 tion is made, will suffice for the payment of all installments;
14 falling due within the next succeeding twelve months, of
15 principal and interest on the obligations for which the
16 annual contributions provided for in the contract shall have
17 been pledged as security. In no case shall such annual con-
18 tributions be in excess of the maximum sum specified in
19 the contract involved, nor for longer than the remainder of
20 the maximum period fixed by the contract.

21 "CONGREGATE HOUSING

22 "SEC. 7. The Secretary shall encourage public housing
23 agencies, in providing housing predominantly for displaced,
24 elderly, or handicapped families, to design, develop, or other-
25 wise acquire such housing to meet the special needs of the

1 occupants and, wherever practicable, for use in whole or in
2 part as congregate housing: *Provided*, That not more than
3 10 per centum of the total amount of contracts for annual
4 contributions entered into in any fiscal year pursuant to the
5 new authority granted under section 202 of the Housing and
6 Urban Development Act of 1970 or under any law subse-
7 quently enacted shall be entered into with respect to units
8 in congregate housing. As used in this paragraph the term
9 'congregate housing' means low-income housing (A) in
10 which some or all of the dwelling units do not have kitchen
11 facilities, and (B) connected with which there is a central
12 dining facility to provide wholesome and economical meals
13 for elderly and displaced families under terms and conditions
14 prescribed by the public housing agency to permit a generally
15 self-supporting operation. Expenditures incurred by a public
16 agency in the operation of a central dining facility in con-
17 nection with congregate housing (other than the cost of pro-
18 viding food and service) shall be considered one of the costs
19 of operation of the project.

20 "LOW-INCOME HOUSING IN PRIVATE ACCOMMODATIONS

21 "SEC. 8. (a) (1) For the purpose of providing a sup-
22 plementary form of low-income housing which will aid in
23 assuring a decent place to live for every citizen and promote
24 efficiency and economy in the program under this Act by
25 taking full advantage of vacancies in the private housing

1 market, each public housing agency shall, to the maximum
2 extent consistent with the achievement of the objectives of
3 this Act, provide low-income housing under this Act in the
4 form of low-income housing in private accommodations in
5 accordance with this section where such housing in private
6 accommodations can be provided at a cost not greater than
7 housing in projects assisted under other provisions of this Act.

8 “(2) The provisions of this section shall not apply to
9 any locality unless the governing body of the locality has
10 by resolution approved the application of such provisions to
11 such locality.

12 “(3) As used in this section, the term ‘low-income
13 housing in private accommodations’ means dwelling units,
14 leased from a private owner, which provide decent, safe, and
15 sanitary dwelling accommodations and related facilities effec-
16 tively supplementing the accommodations and facilities in
17 low-income housing assisted under the other provisions of
18 this Act in a manner calculated to meet the total housing
19 needs of the community in which they are located; and the
20 term ‘owner’ means any person or entity having the legal
21 right to lease or sublease property containing one or more
22 dwelling units as described in this section.

23 “(b) Each public housing agency, by notification to
24 the owners of housing suitable for use as low-income housing
25 in private accommodations, or by publication or advertise-

1 ment, or otherwise, shall from time to time make known to
2 the public in the community or communities under its juris-
3 diction the anticipated need for dwelling units in such com-
4 munity or communities to be used as low-income housing in
5 private accommodations under this section, inviting the
6 owners of such dwelling units to make available for purposes
7 of this section one or more of such units (not exceeding 10
8 per centum of the units in any single structure except to the
9 extent that the agency, because of the limited number of
10 units in the structure or for any other reason, determines
11 that such limit should not be applied). The public housing
12 agency shall conduct appropriate inspections of the units
13 offered to be made available in any residential structure by
14 the owner thereof in response to such invitation, and if—

15 “(1) it finds that such units are, or may be made,
16 suitable for use as low-income housing in private accom-
17 modations within the meaning of subsection (a) (3);
18 and

19 “(2) the rentals to be charged for such units, as
20 negotiated and agreed to by the agency and the owner
21 of the structure in a manner consistent with subsection
22 (c) (2), are within the financial range of families of
23 low income, such agency may approve such units for
24 use as low-income housing in private accommodations
25 in accordance with (and subject to the applicable limi-

1 tations contained in) this section. Each public housing
2 agency shall maintain and keep current a list of units
3 approved by it under this subsection, including such
4 information with respect to each such unit as it may
5 consider necessary or appropriate.

6 “(c) To the extent of contracts for annual contributions
7 entered into by the Secretary with a public housing agency
8 under this Act, such agency may enter into contracts with
9 the owners of structures containing dwelling units approved
10 under subsection (b) for the use of such units in accordance
11 with this section (and no limitation not specifically provided
12 for in this section shall be imposed by regulations of the Sec-
13 retary on the types or categories of structures or dwelling
14 units, qualifying under subsection (a) (3) and approved
15 under subsection (b), which may be so used in any com-
16 munity). Each such contract with an owner shall provide
17 (with respect to any unit) that—

18 “(1) the selection of tenants of such unit shall be
19 the function of the owner, subject to the provisions of
20 the contract between the Secretary and the agency;

21 “(2) the rental and other charges to be received
22 by the owner shall be negotiated and agreed to by the
23 agency and the owner, and the rental and other charges
24 to be paid by the tenant shall be determined in accord-
25 ance with the standards applicable to units in low-

1 income housing projects assisted under the other
2 provisions of this Act;

3 “(3) the agency shall have the sole right to give
4 notice to vacate, with the owner having the right to
5 make representations to the agency for termination of a
6 tenancy;

7 “(4) maintenance and replacement (including re-
8 decoration) shall be in accordance with the standard
9 practice for the building concerned as established by
10 the owner and agreed to by the agency; and

11 “(5) the agency and the owner shall carry out such
12 other appropriate terms and conditions as may be mu-
13 tually agreed to by them.

14 Each contract between a public housing agency and an
15 owner entered into under this subsection shall be for a term
16 of not less than twelve months nor more than one hundred
17 and twenty months, and shall be renewable by such agency
18 and owner at the expiration of such term: *Provided*, That
19 no renewal of such a contract shall result in a total term
20 exceeding two hundred and forty months (or one hundred
21 and eighty months in the case of an existing structure).

22 “(d) The period over which payments will be made to
23 a public housing agency for a project of low-income housing
24 in private accommodations under this section, and the aggre-
25 gate amount of such payments, under a contract for annual

1 contributions, shall be determined on the basis of the number
2 of units in the community or communities under the juris-
3 diction of such agency which are in use (or can reasonably
4 be expected to be placed in use) as low-income housing in
5 private accommodations under this section, taking into ac-
6 count the terms of the leases under which such units are (or
7 will be) so used. In addition, contracts for financial assistance
8 entered into by the Secretary with a public housing agency
9 pursuant to this section shall provide for reimbursement of
10 reasonable and necessary expenses incurred by such agency
11 in conducting inspections described in subsection (b).

12 “(e) The provisions of sections 5(e) and 6(d) of this
13 Act shall not apply to (1) low-income housing in private
14 accommodations provided under this section, or (2) housing
15 purchased (or in the process of purchase) by the public
16 agency for resale to tenants as provided in subsection (f).

17 “(f) To the extent authorized in contracts entered into
18 by the Secretary with a public housing agency, such agency
19 may purchase any structure containing one or more dwelling
20 units leased to provide low-income housing in private accom-
21 modations under this section for the purpose of reselling the
22 structure to the tenant or tenants of the structure or to a
23 group of such tenants occupying units aggregating in value
24 at least 80 per centum of the structure's total value. Any

1 such resale may be made on the terms and conditions set
2 forth in section 10 of this Act.

3 "ANNUAL CONTRIBUTIONS FOR OPERATION OF LOW-
4 INCOME HOUSING PROJECTS

5 "SEC. 9. (a) In addition to the contributions authorized
6 to be made for the purposes specified in section 5 of this Act,
7 the Secretary may make annual contributions to public hous-
8 ing agencies for the operation of low-income housing proj-
9 ects. The contribution payable annually under this section
10 shall not exceed the amounts which the Secretary determines
11 are required (1) to assure the low-income character of the
12 projects involved, and (2) to achieve and maintain adequate
13 operating services and reserve funds. The Secretary shall
14 embody the provisions for such annual contributions in a
15 contract guaranteeing their payment. At the initial stage of
16 development of each new low-income housing project, or in
17 the case of existing projects at the earliest practicable time
18 after the date of enactment of this section, the public housing
19 agency responsible for the project shall determine, with the
20 approval of the Secretary, appropriate and required operating
21 services and reserve funds, including tenant services, based
22 on the character and location of the project and the charac-
23 teristics of the families to be housed. Services so determined
24 shall constitute the base level of operating services of a public

1 housing agency. If income from a project of a public housing
2 agency will not be sufficient in any year to meet the agency's
3 base level of operating services at projected costs for that
4 year, the Secretary shall make contributions to meet the
5 residual cost. The Federal commitment to maintain a base
6 level of operating services shall be incorporated in an annual
7 contributions contract. A public housing agency shall signify
8 its base level of operating services requirements at the begin-
9 ning of its operating year at the time of the preparation of
10 its annual budget. A public housing agency shall at the time
11 of its reexamination of tenant income (at least every two
12 years) reexamine its base level of operating services in order
13 to determine the adequacy of the services provided for in the
14 light of changing conditions and standards, and submit recom-
15 mendations for changes for the approval of the Secretary.

16 “(b) The aggregate rentals required to be paid in any
17 year by families residing in the dwelling units administered
18 by a public housing agency receiving annual contributions
19 under this section shall be not less than an amount equal to
20 one-fifth of the sum of the incomes of all such families.

21 “(c) From the amounts authorized in section 5(c) of
22 this Act, the Secretary is authorized to enter into contracts
23 for annual contributions under this section aggregating not
24 more than \$350,000,000 per annum.

1 “ALLOCATION OF FUNDS

2 “SEC. 10. For the purpose of assisting local public hous-
3 ing agencies to improve their capacity to plan, develop, and
4 manage federally assisted housing in response to the changing
5 needs and circumstances of different sizes of communities in
6 urban, suburban, and rural areas, the Secretary is authorized
7 to utilize the annual contributions authority provided on or
8 after July 1, 1974, under section 5 (c) of this Act, in the
9 amounts specified, for the following purposes:

10 “(1) The Secretary is authorized to provide addi-
11 tional annual contributions in an aggregate amount not
12 to exceed \$10,000,000 to assist local public housing
13 agencies in communities with populations of fifty thou-
14 sand or more in undertaking one or both of the following
15 activities: (A) the preparation or implementation of
16 long-range (five years or more) housing programs to
17 assist in achieving local housing goals, comprehensive
18 plans, or community development programs approved by
19 the governing body of the locality; or (B) the planning
20 and initiation of a centralized housing services operation
21 in the locality encompassing, but not limited to, such ac-
22 tivities as providing for a centralized information or
23 tenant selection office for families seeking housing assist-
24 ance; performing housing development, management, or
25 maintenance services on behalf of other local entities;

1 providing information to the general public on the status
2 and changes in the community's housing supply and
3 availabilities, or similar kinds of housing services of gen-
4 eral benefit to the community. Such additional annual
5 contributions shall be made available to local public
6 housing agencies to plan and carry out such programs, as
7 approved by the Secretary, in an amount sufficient to
8 cover the full amount of the expenses to be incurred in
9 the first year, two-thirds of such expenses in the second
10 year, and one-half of such expenses in the third year.

11 “(2) The Secretary is authorized to provide addi-
12 tional annual contributions in an aggregate amount not
13 to exceed \$10,000,000 to assist local public housing
14 agencies in communities or other local jurisdictions of
15 less than fifty thousand population, in consolidating their
16 agencies or their functions into operations which in-
17 clude or serve at least one thousand dwelling units.
18 Such additional annual contributions to plan and imple-
19 ment such a consolidated operation, as approved by the
20 Secretary, shall be in an amount sufficient to cover the
21 full amount of expense related to planning and carrying
22 out the elements relative to consolidation in the first
23 year, two-thirds of such expense in the second year,
24 and one-half of such expense in the third year.

1. ~~4~~ ~~1961~~ ~~ED~~ ~~1961~~ ~~1960~~ "GENERAL PROVISIONS

2. "SEC. 11. (a) In the performance of, and with respect
3 to, the functions, powers, and duties vested in him by this
4 Act, the Secretary notwithstanding the provisions of any
5 other law, shall—

6 " (1) prepare annually and submit a budget pro-
7 gram as provided for wholly owned Government cor-
8 porations by the Government Corporation Control Act,
9 as amended; and

10 " (2) maintain an integral set of accounts which
11 shall be audited annually by the General Accounting
12 Office in accordance with the principles and procedures
13 applicable to commercial transactions as provided by the
14 Government Corporation Control Act, as amended, and
15 no other audit shall be required.

16 " (b) All receipts and assets of the Secretary under this
17 Act shall be available for the purposes of this Act until
18 expended.

19 " (c) The Federal Reserve banks are authorized and
20 directed to act as depositories, custodians, and fiscal agents
21 for the Secretary in the general exercise of his power under
22 this Act, and the Secretary may reimburse any such bank
23 for its services in such manner as may be agreed upon.

24 "FINANCING LOW-INCOME HOUSING PROJECTS

25 "SEC. 12. (a) Obligations issued by a public housing
26 agency in connection with low-income housing projects

1 which (1) are secured (A) by a pledge of a loan under
2 any agreement between such public housing agency and the
3 Secretary, or (B) by a pledge of annual contributions under
4 an annual contributions contract between such public housing
5 agency and the Secretary, or (C) by a pledge of both an-
6 nual contributions under an annual contributions contract and
7 a loan under an agreement between such public housing
8 agency and the Secretary, and (2) bear, or are accompanied
9 by, a certificate of the Secretary that such obligations are so
10 secured, shall be incontestable in the hands of a bearer and
11 the full faith and credit of the United States is pledged to the
12 payment of all amounts agreed to be paid by the Secretary
13 as security for such obligations.

14 “(b) Except as provided in section 5(g), obligations,
15 including interest thereon, issued by public housing agencies
16 in connection with low-income housing projects shall be ex-
17 empt from all taxation now or hereafter imposed by the
18 United States whether paid by such agencies or by the Secre-
19 tary. The income derived by such agencies from such projects
20 shall be exempt from all taxation now or hereafter imposed
21 by the United States.

22 “LABOR STANDARDS

23 “SEC. 13. Any contract for loans, annual contributions,
24 sale, or lease pursuant to this Act shall contain a provision
25 requiring that not less than the wages prevailing in the

1 locality, as determined or adopted (subsequent to a deter-
2 mination under applicable State or local law) by the Secre-
3 tary, shall be paid to all architects, technical engineers,
4 draftsmen, and technicians employed in the development and
5 to all maintenance laborers and mechanics employed in the
6 operation of the low-income housing project involved; and
7 shall also contain a provision that not less than the wages
8 prevailing in the locality, as predetermined by the Secretary
9 of Labor pursuant to the Davis-Bacon Act (49 Stat. 1011),
10 shall be paid to all laborers and mechanics employed in the
11 development of the project involved (including a project for
12 the use of privately built housing in any case, other than
13 under the authority of section 8 of this Act, where the public
14 housing agency and the builder or sponsor enter into an
15 agreement for such use before construction or rehabilitation
16 is commenced), and the Secretary shall require certification
17 as to compliance with the provisions of this section prior to
18 making any payment under such contract.”

19 APPLICABILITY OF RENTAL REQUIREMENTS

20 SEC. 202. If a contract for annual contributions entered
21 into pursuant to section 9 of the United States Housing Act
22 of 1937 would require the establishment of an increased
23 rental charge for a family which occupies a low-income
24 housing dwelling unit as of the effective date of such contract,

1 the required adjustment in the family's rent will be accom-
2 plished as follows:

3 (1) when the public agency makes the first review
4 of the family's income pursuant to section 6 (c) (2) of
5 the Act which occurs at least one year after the effective
6 date of entering into such contract, the family's monthly
7 rent will be increased by an amount equal to one-half
8 the additional amount of rent which would then be
9 required pursuant to section 9; and

10 (2) the family's monthly rental charge will be in-
11 creased to the full amount of the rental charge required
12 under section 9 when the public housing agency makes
13 its next review of the family's income.

14 Increases in rentals for such families will be effective the
15 first day of the month immediately following the month in
16 which the public housing agency makes the review of family
17 income.

18 EXEMPTION OF CERTAIN PROJECTS FROM RENTAL

19 FORMULA

20 SEC. 203. The rental or income contribution provisions
21 of the United States Housing Act of 1937, as amended by
22 section 201 of this Act, shall not preclude the use of special
23 schedules of required payments as approved by the Secretary
24 for participants in mutual help housing projects who con-

1 tribute labor, land or materials to the development of such
2 projects.

3 REPEAL OF SPECIFICATION REQUIREMENTS IN
4 CONSTRUCTION CONTRACTS

5 SEC. 204. Section 815 of the Housing Act of 1954 is
6 repealed.

7 RETROACTIVE EFFECT OF REPEAL OF SECTION 10(j)

8 SEC. 205. Section 206 (c) of the Housing Act of 1961
9 (Public Law 87-70, approved June 30, 1961, 75 Stat.
10 165) is amended by adding at the end thereof the following
11 sentence: "The Secretary of Housing and Urban Develop-
12 ment is authorized to agree with a public housing agency
13 to the amendment of any annual contributions contract con-
14 taining the provision prescribed in section 10 (j), so as to
15 delete such provision and waive any rights of the United
16 States accrued or that may accrue under such provision."

17 AMENDMENT TO NATIONAL BANK ACT

18 SEC. 206. The sixth sentence of paragraph "Seventh"
19 of section 5136 of the Revised Statutes, as amended (12
20 U.S.C. 24), is amended—

21 (1) by striking out wherever it appears therein
22 "1421a (b) of title 42" and inserting in lieu thereof
23 "6 (g) of the United States Housing Act of 1937";

24 (2) by deleting before clause (1) the word
25 "either";

1 (3) by deleting in clause (1) the parenthetical
2 phrase “(which obligations shall have a maturity of
3 not more than eighteen months) ”;

4 (4) by deleting before clause (2) the word “or”;
5 and

6 (5) by inserting before the colon before the first
7 proviso the following: “, or (3) by a pledge of both
8 annual contributions under an annual contributions con-
9 tract containing the covenant by the Secretary which is
10 authorized by section 6 (g) of the United States Housing
11 Act of 1937, and a loan under an agreement between
12 the local public housing agency and the Secretary in
13 which the public housing agency agrees to borrow from
14 the Secretary, and the Secretary agrees to lend to the
15 public housing agency, prior to the maturity of such
16 obligations, moneys in an amount which (together with
17 any other moneys irrevocably committed under the an-
18 nual contributions contract to the payment of principal
19 and interest on such obligations) will suffice to provide
20 for the payment when due of all installments of principal
21 and interest on such obligations, which moneys under the
22 terms of said agreement are required to be used for the
23 purpose of paying the principal and interest on such
24 obligations at their maturity”.

1 AMENDMENT TO LANHAM ACT

2 SEC. 207. (a) Section 606 of the Act of October 14,
3 1940, as amended (42 U.S.C. 1586), is amended by delet-
4 ing in subsection (b) that part of the first sentence which
5 follows the parenthetical phrase and all of the second
6 sentence.

7 (b) Section 606(c) (1) of such Act is amended by
8 adding before the period at the end thereof the following:
9 “, or, with the Secretary’s approval, used to finance the re-
10 pair or rehabilitation of a project or part thereof conveyed
11 to the public housing agency under this section”.

12 EFFECTIVE DATE OF CHAPTER II

13 SEC. 208. The provisions of this chapter shall be effective
14 at such date or dates as the Secretary of Housing and
15 Urban Development shall prescribe, but not later than six
16 months after enactment thereof.

17 Chapter III—SPECIAL HOUSING NEEDS

18 SEC. 301. Title V of the Housing and Urban Develop-
19 ment Act of 1970 is amended by adding at the end thereof
20 the following:

21 “ADDITIONAL RESEARCH AUTHORITY

22 “SEC. 506. (a) In carrying out activities under section
23 501, the Secretary may undertake special demonstrations
24 to determine the housing design, the housing structure, the
25 housing-related facilities, services, and amenities most ef-

1 fective or appropriate to meet the needs of groups with spe-
2 cial housing needs including the elderly, the handicapped, the
3 displaced, single individuals, broken families, and large house-
4 holds. For this purpose, the Secretary is authorized to enter
5 into contracts with, to make grants to, and to provide other
6 types of assistance to individuals and entities with special
7 competence and knowledge to contribute to the planning,
8 development, design, and management of such housing.

9 “(b) In carrying out his functions under this section, the
10 Secretary shall give preferential attention to demonstrations
11 which in his judgment involve areas of housing user needs
12 most neglected in past and current research and demonstra-
13 tion efforts.

14 “(c) The Secretary is authorized to undertake demon-
15 strations involving the actual planning, development, and
16 occupancy of housing, utilizing the contract and loan au-
17 thority of any federally assisted housing program. He is also
18 authorized to set aside any development, construction, de-
19 sign, and occupancy requirements, for the purposes of these
20 demonstrations, if in his judgment they inhibit the testing of
21 housing designed to meet the special housing needs.

22 “(d) In carrying out this section, the Secretary shall
23 include, as part of any demonstration, an evaluation of the
24 demonstration to cover the full experience involved in plan-
25 ning, development and occupancy.

1 “(e) There are authorized to be appropriated for re-
2 search under this section, in addition to any other contract or
3 loan authority which the Secretary may utilize under sub-
4 section (c), not to exceed \$30,000,000 which shall remain
5 available until expended.”.

93^d CONGRESS
1ST SESSION

S. 2185

IN THE SENATE OF THE UNITED STATES

JULY 14, 1973

Mr. WILLIAMS introduced the following bill; which was read twice; and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To provide a \$100,000,000 increase in the authorized funding for the section 202 housing for the elderly and handicapped program.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 202 (a) (4) of the Housing Act of 1959 is
4 amended by striking out the first sentence thereof and insert-
5 ing the following: "There is authorized to be appropriated
6 for the purposes of this section not to exceed \$750,000,000."

II

IN THE SENATE OF THE UNITED STATES

Mr. ABOUREZK (for himself, Mr. McGOVERN, Mr. BAYH, Mr. BURDICK, Mr. CHURCH, Mr. CLARK, Mr. COOK, Mr. HART, Mr. HATFIELD, Mr. HATHAWAY, Mr. HOLLINGS, Mr. HUGHES, Mr. HUMPHREY, Mr. INOUE, Mr. KENNEDY, Mr. MANSFIELD, Mr. McGEE, Mr. METCALF, Mr. MONDALE, Mr. MOSS, Mr. MUSKIE, Mr. RANDOLPH, and Mr. TUNNEY) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

To provide housing for persons in rural areas of the United States
on an emergency basis.

3 SECTION 1. This Act may be cited as the “Emergency
4 Rural Housing Act of 1973”.

6 SEC. 2. The Congress finds that—

(1) after more than three decades of Federal activ-
ity in the housing field and more than two decades after
the enactment of the Housing Act of 1949 which pledged

1 this Nation to a decent home and suitable living environ-
2 ment for every American family, there are millions of
3 substandard, crowded, and otherwise deficient dwelling
4 units which lack running water and sanitation facilities
5 essential to health and decency;

6 (2) more than half of these units are in nonmetro-
7 politan areas;

8 (3) none of the existing housing agencies, public
9 or private, function adequately in meeting the housing
10 needs of the poorest people in small towns and rural
11 areas;

12 (4) the administrative funds and grant and lend-
13 ing authorities of Farmers Home Administration are
14 inadequate to the task, and its authorized capacity to
15 subsidize dwellings falls far short of that required to
16 provide for the poor;

17 (5) public housing exists in little more than token
18 quantities in small towns and rural areas; and public
19 housing legislation presently does not permit a subsidy
20 adequate to meet the needs of the poorest of the poor;

21 (6) despite the moving rhetoric of the last two
22 decades, the authority and funds to satisfy the housing
23 needs of low-income families are not available;

24 (7) existing agencies operating under existing au-
25 thorities could not meet the needs of millions of the

1 rural poor even if all restraints on administrative funds
2 were lifted, nor would they meet those needs if there
3 were no ceiling placed on grant and loan funds; and

4 (8) the ill health and human degradation that flow
5 from this continuing neglect and denial of responsibility
6 call for emergency action.

7 DEFINITIONS

8 SEC. 3. For the purpose of this Act—

9 (1) “Administration” means the Emergency Rural
10 Housing Administration established under section 4 of
11 this Act;

12 (2) “Administrator” means the Administrator of
13 the Administration;

14 (3) “adjusted income” means the total income of
15 an individual or family reduced by—

16 (A) 5 per centum of that income;

17 (B) \$300 for that individual or for each mem-
18 ber of that family; and

19 (C) \$1,000 for that individual if he is physi-
20 cally disabled or mentally retarded or for each
21 member of that family who is physically disabled
22 or mentally retarded;

23 (4) “area responsibility agreement” means an
24 agreement between the Administrator and a rural hous-

1 ing association or other organization to provide minimal
2 housing facilities for all eligible persons in an area;

3 (5) "eligible person" means an individual or family
4 which (A) lives or desires to live in a rural area or
5 small community, and (B) cannot with reasonable
6 certainty obtain minimum housing facilities by any means
7 other than assistance under this Act within two years
8 after the date of application for assistance under this
9 Act;

10 (6) the term "minimal housing facilities" means a
11 safe, weatherproof dwelling which has running potable
12 water, modern sanitation facilities including a kitchen
13 sink, toilet, and shower or tub, and which meets such
14 other requirements as may be established by the Admin-
15 istrator with respect to square footage and other facili-
16 ties or standards;

17 (7) "rural area" means any open country or any
18 other such place in the United States; and

19 (8) "small community" means any place, town,
20 village, or city which has a population not in excess
21 of twenty-five thousand people.

22 ESTABLISHMENT AND DUTIES

23 SEC. 4. (a) There is established as an independent
24 agency the Emergency Rural Housing Administration. The
25 management of the Administration shall be vested in an

5

1 Administrator who shall be appointed by the President, by
2 and with the advice and consent of the Senate.

3 (b) It shall be the duty of the Administration to provide
4 minimal housing facilities for all eligible persons in rural
5 areas and small communities and to do so to the extent pos-
6 sible within a five-year period. The duties and powers of the
7 Administration shall not be transferred to any other depart-
8 ment, agency, or instrumentality of the United States.

9 (c) Section 5314 of title 5, United States Code, is
10 amended by adding at the end thereof the following new
11 clause:

12 “(60) Administrator, Emergency Rural Housing
13 Administration.”.

14 POWERS

15 SEC. 5. The Administration shall have the power—

16 (1) to sue and be sued, and complain and defend,
17 in its name and through its own counsel;

18 (2) to adopt, amend, and repeal such rules and
19 regulations as may be necessary;

20 (3) to lease, purchase, or acquire by condemnation
21 or otherwise, and own, hold, improve, use, or otherwise
22 deal in and with, any property, rural, personal, or mixed,
23 or any interest therein, wherever situated;

24 (4) to accept gifts or donations of services, or

1 property, real, personal, mixed, tangible or intangible,
2 in aid of any of the purposes of the Administration;

3 (5) to sell, convey, mortgage, pledge, lease, ex-
4 change, and otherwise dispose of its property and assets;

5 (6) to appoint such officers and employees as may
6 be required without regard to the provisions of title 5,
7 United States Code, governing appointments in the com-
8 petitive service; and

9 (7) to enter into contracts, execute instruments,
10 incur liabilities, and do all things which are necessary or
11 incidental to the proper management of its affairs.

12 HOME OWNERSHIP

13 SEC. 6. (a) The Administration is authorized to make
14 loans to eligible persons to finance the acquisition of land
15 and the construction thereon of minimal housing facilities,
16 or to finance the acquisition or rehabilitation of existing facil-
17 ities in accordance with minimum housing facilities standards.

18 (b) At least 50 per centum of the principal amount of
19 any loan made under this subsection shall be amortized over
20 a period of not more than forty years, shall bear interest
21 at a rate of not less than 4 per centum per year, and shall
22 be secured by a first mortgage. The remainder of such princi-
23 pal amount may be evidenced by a note secured by a second
24 mortgage which becomes payable and interest bearing only
25 when and to the extent that the borrower's ability to repay

1 exceeds that required to retire the first note at the maximum
2 interest rate or upon the sale or other disposition of the prop-
3 erty financed by the loan. The Administration shall deter-
4 mine the percentage rate, the amount of the principal
5 deferment, and the other terms and conditions of any such
6 loan, taking into account the adjusted income of the eligible
7 person involved.

8 (c) The Administration may not require an eligible
9 person who is a borrower to pay more than 20 per centum
10 of his adjusted annual income on principal, interest, taxes,
11 and insurance, but a borrower, in order to qualify for owner-
12 ship may voluntarily agree to pay more.

13 (d) The Administration is authorized to make rehabili-
14 tation grants not in excess of \$3,500 to owners who occupy
15 substandard housing and whose income is too low to repay
16 a loan on terms and conditions described in this section.

17 HOUSING DEVELOPMENTS

18 SEC. 7. The Administrator is authorized to acquire land
19 and engage in the development of housing projects to be sold
20 under section 6 or rented under section 8 of this Act.

21 RENTAL FACILITIES

22 SEC. 8. (a) The Administrator is authorized to provide
23 financing to rural housing associations which meet the re-
24 quirements of section 9, for all or any part of the acqui-
25 sition, construction, rehabilitation, operation, and maintenance

1 of (1) minimal housing facilities in rural areas and small
2 communities to be rented by eligible persons, (2) water and
3 sewer facilities for such housing facilities, and (3) related
4 community facilities for such housing facilities.

5 (b) Financing for the acquisition, construction, and re-
6 habilitation of rental units and related facilities shall be in the
7 form of a non-interest-bearing loan and shall be repayable
8 (1) in annual installments by the borrower during a forty-
9 year period from the making thereof, only to the extent that
10 the income of the borrower attributable to the rental units and
11 related facilities exceeds reasonable and necessary costs
12 (such as taxes, utilities, maintenance, and other manage-
13 ment and operating costs approved by the Administration),
14 or (2) in the event that the rental units and related facilities
15 are sold under section 6 or otherwise disposed of.

16 (c) The Administrator is authorized to enter into con-
17 tracts for annual assistance payments with a borrower under
18 this section. Such contracts shall provide for payments to
19 borrowers in amounts which do not exceed the difference be-
20 tween the total costs attributable to the rental project (taxes,
21 utilities, maintenance, and other such management and oper-
22 ating costs) and total revenues accruing to the rental proj-
23 ect. The aggregate amount of such contracts shall not exceed,
24 in the aggregate, \$1,000,000,000 per annum.

25 (d) Rental payments required from, and the amount of

1 assistance attributable to, any eligible person shall bear a
2 reasonable relationship to the income of the eligible person,
3 taking into account reasonable needs for food, clothing, med-
4 ical care, education, and other necessities as determined by
5 the Administration. In no case shall any such payment, in-
6 cluding the reasonable cost of heat, water, and light, exceed
7 25 per centum of the adjusted income of the eligible person.

8 (e) Any lease or other occupancy agreement for fa-
9 cilities under this section shall include whenever feasible
10 an option to buy in accordance with the provisions of section
11 6 of this Act.

12 LOCAL AGENCY AGREEMENTS

13 SEC. 9. (a) (1) To carry out the purposes of this Act,
14 the Administration shall enter into area responsibility agree-
15 ments with State-chartered rural housing associations.

16 (2) Such associations shall, pursuant to contracts with
17 the Administration, determine the eligibility of persons seek-
18 ing assistance under this Act; make and service loans and
19 grants under section 6 of this Act; acquire land and develop
20 housing projects under section 7 of this Act; own and oper-
21 ate, or make and service loans to and enter into contracts
22 with public or private nonprofit organizations to own and
23 operate, rental housing and related facilities under section 8
24 of this Act.

25 (3) Contracts entered into by the Administration with

1 any local rural housing associations shall require the associ-
2 ation to serve all eligible areas and eligible persons within
3 its designated jurisdiction.

4 (4) The Administration shall not advance funds for
5 purposes of making loans under this Act to any local rural
6 housing association in any State unless it determines that all
7 areas in the State eligible for assistance under this Act will
8 be within the jurisdiction of such an association and that all
9 such associations will enter into area responsibility agree-
10 ments.

11 (b) (1) A rural housing association shall be chartered
12 for the purpose of contracting with the Administration in
13 order to carry out the purposes of this Act. They shall be
14 empowered (A) to lease, purchase, or otherwise acquire,
15 and own, hold, improve, use, or otherwise deal in and with,
16 any property, real, personal, or mixed, or any interest
17 therein, wherever situated; to accept gifts or donations of
18 services, or property, real, personal, mixed, tangible, or in-
19 tangible, in aid of any of the purposes for which the associa-
20 tion is established; (B) to sell, convey, mortgage, pledge,
21 lease exchange, and otherwise dispose of its property and
22 assets; (C) to sue and be sued, and complain and defend in
23 its name through its own counsel; (D) to enter into con-
24 tracts, execute instruments, incur liabilities, and do all things

1 which are necessary or incidental to the proper management
2 of its affairs.

3 (2) Such an association shall be controlled by a board
4 of directors, of which two-thirds of the membership shall be
5 persons receiving or eligible for assistance under this Act.
6 The board shall fairly represent the geographic area of the
7 jurisdiction of the association. Such boards shall be chosen
8 by democratically conducted election with any person re-
9 siding within the jurisdiction of the association who is re-
10 ceiving assistance or is eligible for assistance under this Act
11 being eligible to vote in such election.

12 (3) Interim boards of directors may be established for
13 organizational purposes but such boards must be replaced in
14 a manner established in paragraph (2) within one year of
15 incorporation.

16 (c) When a State has failed to establish an association
17 described in this section within one year after the enactment
18 of this Act, or the Administration finds that any association
19 which is established is incapable of carrying out or unwilling
20 to carry out the purposes of this Act, then the Administra-
21 tion shall establish in that State or area a comparable or-
22 ganization to carry out this Act.

23 (d) The Administration shall have access to the books
24 or records, and any other papers of any association which

1 enters into an area responsibility agreement in order to insure
2 that such association is at all times operating in compliance
3 with the provisions of this Act.

4 LIMITATIONS AND CONDITIONS

5 SEC. 10. (a) The Administration may not require, as a
6 condition of assistance under this Act, the relocation of any
7 eligible person in order to engage in or to facilitate the
8 economic development of an area.

9 (b) Any construction or rehabilitation undertaken with
10 funds authorized under this Act shall—

11 (1) be designed to require minimum maintenance
12 over a useful life of not less than fifty years: *Provided*,
13 That this limitation shall not apply to new or rehabili-
14 tated housing if the Administration finds that less perma-
15 nent housing is in accordance with the basic purposes of
16 this Act;

17 (2) be in accordance with plans developed with
18 the active participation of the eligible persons involved.

19 PRIORITIES

20 SEC. 11. (a) The Administration shall, insofar as is
21 practicable, furnish assistance under this Act to eligible per-
22 sons with the lowest adjusted incomes first.

23 (b) To the maximum extent feasible, the Administra-
24 tion shall provide for homeownership rather than rental
25 occupancy.

ANNUAL REPORT

2 SEC. 12. The Administration shall, within sixty days
3 after the end of each fiscal year, prepare and transmit to the
4 Congress and the President an annual report of the operation
5 and activities of the Administration. Such report shall con-
6 tain, but not be limited to, the long range and annual goals,
7 progress toward the attainment of those goals by area, and
8 any problems which are being encountered in fulfilling the
9 purposes of this Act.

BORROWING AUTHORITY

11 SEC. 13. (a) There is hereby established the Rural
12 Housing Investment Fund (hereinafter referred to as the
13 "fund") which shall be used by the Administration for
14 carrying out the provisions of this Act. The Administration
15 is authorized to issue to the Secretary of the Treasury notes
16 or other obligations in such sums as may be necessary to
17 carry out the purposes of this Act, in such forms and denom-
18 inations, bearing such maturities, and subject to such terms
19 and conditions as may be prescribed by the Secretary of
20 the Treasury. Such notes or other obligations shall bear in-
21 terest at a rate determined by the Secretary of the Treasury,
22 taking into consideration the current average interest rate
23 on outstanding marketable obligations of the United States
24 during the month preceding the issuance of the notes or other
25 obligations. The Secretary of the Treasury is authorized and

1 directed to purchase any notes and other obligations issued
2 hereunder and for that purpose he is authorized to use as a
3 public debt transaction the proceeds from the sale of any se-
4 curities issued under the Second Liberty Bond Act, and the
5 purposes for which securities may be issued under that Act
6 are extended to include any purchase of such notes and ob-
7 ligations. The Secretary of the Treasury may at any time sell
8 any of the notes or other obligations required by him under
9 this subsection. All redemptions, purchases, and sales by the
10 Secretary of the Treasury of such notes or other obligations
11 shall be treated as public debt transactions of the United
12 States. All amounts borrowed under this section by the Ad-
13 ministration and all receipts, collections, and proceeds re-
14 ceived by the Administration under this Act shall be
15 deposited in the fund.

16 (b) The Administration shall utilize the fund--

17 (1) to make loans for homeownership under sec-
18 tion 6 of this Act;

19 (2) to acquire land and engage in the development
20 of housing projects under section 7 of this Act;

21 (3) to finance the acquisition, construction, and re-
22 habilitation of rental housing and related facilities under
23 section 8 (b) of this Act; and

24 (4) to pay taxes, insurance, prior liens, expenses,
25 necessary to make fiscal adjustments in connection with

1 the application and transmittal of collections, and other
2 expenses and advances to protect the security for loans
3 and grants made under this section and to acquire such
4 security property at foreclosure sale or otherwise.

5 APPROPRIATIONS

6 SEC. 14. (a) There shall be credited to the Rural Hous-
7 ing Investment Fund, by annual appropriations, the amounts
8 by which nonprincipal payments made from the fund to the
9 Secretary during each fiscal year exceed interest received
10 from borrowers each year.

11 (b) There are authorized to be appropriated such sums
12 as may be necessary to administer the provisions of this Act
13 including the cost of administration incurred by rural housing
14 associations.

15 (c) There are authorized to be appropriated to the fund
16 such sums, not to exceed \$1,000,000,000, as may be neces-
17 sary for grants under section 6 (d) of this Act, such sums to
18 remain available until expended.

19 (d) There are authorized to be appropriated such sums
20 as are necessary to meet obligations for annual assistance
21 payments contracts entered into by the Administration under
22 section 8 (c).

23 (e) There is authorized to be appropriated not to exceed
24 \$500,000,000 in each fiscal year, reduced by any amounts
25 paid into the Rural Housing Investment Fund in each such

1 year, for repayment of principal on loans made by the Admin-
2 istration under this Act, to be applied to the retirement of
3 notes or other obligations issued by the Administration under
4 section 13 (a) of this Act.

IN THE SENATE OF THE UNITED STATES

Mr. Brock introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

To provide for greater disclosure of the nature and costs of real estate settlement services, to eliminate the payment of kickbacks and unearned fees in connection with settlement services provided in federally related mortgage transactions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

4 SEC. 101. For purposes of this Act—

5 (1) the term "federally related mortgage loan" in-
6 cludes any loan which—

7 (A) is secured by residential real property de-
8 signed principally for the occupancy of from one to
9 four families; and

2

1 (B) (i) is made in whole or in part by any
2 lender the deposits or accounts of which are insured
3 by any agency of the Federal Government, or is
4 made in whole or in part by any lender which is
5 itself regulated by any agency of the Federal Gov-
6 ernment; or

7 (ii) is made in whole or in part, or insured,
8 guaranteed, supplemented, or assisted in any way,
9 by the Secretary or any other officer or agency of
10 the Federal Government or under or in connection
11 with a housing or urban development program ad-
12 ministered by the Secretary or a housing or related
13 program administered by any other such officer or
14 agency; or

15 (iii) is eligible for purchase by the Federal Na-
16 tional Mortgage Association, the Government Na-
17 tional Mortgage Association, or the Federal Home
18 Loan Mortgage Corporation, or from any financial
19 institution from which it could be purchased by the
20 Federal Home Loan Mortgage Corporation; or

21 (iv) is made in whole or in part by any "credi-
22 tor", as defined in section 103 (f) of the Consumer
23 Credit Protection Act of 1968 (15 U.S.C. 1602
24 (f)), who makes or invests in residential real estate
25 loans aggregating more than \$1,000,000 per year;

1 (2) the term "thing of value" includes any pay-
2 ment, advance, funds, loan, service, or other considera-
3 tion;

4 (3) the term "person" includes individuals, corpora-
5 tions, associations, partnerships, and trusts;

6 (4) the term "settlement services" includes the fol-
7 lowing services when provided in connection with a real
8 estate settlement: title searches, title examinations, the
9 provision of title certificates, title insurance, services ren-
10 dered by an attorney, property surveys, the rendering of
11 credit reports, pest and fungus inspections, and the han-
12 dling of the closing or settlement; and

13 (5) the term "Secretary" means the Secretary of
14 Housing and Urban Development.

15 UNIFORM SETTLEMENT STATEMENT

16 SEC. 102. The Secretary, in consultation with the Ad-
17 ministrators of Veterans' Affairs, the Federal Deposit Insur-
18 ance Corporation, and the Federal Home Loan Bank Board,
19 shall develop and prescribe a standard form for the statement
20 of settlement costs which shall be used (with such minimum
21 variations as may be necessary to reflect unavoidable dif-
22 ferences in legal and administrative requirements or practices
23 in different areas of the country) as the standard real estate
24 settlement form in all transactions in the United States which
25 involve federally related mortgage loans. Such form shall

1 conspicuously and clearly itemize the charges imposed upon
2 both the borrower and the seller in connection with the
3 settlement, and shall indicate whether the title insurance
4 premium included in such charges covers or insures the
5 lender's interest in the property, the borrower's interest, or
6 both. Such form shall include all information and data re-
7 quired to be provided for such transactions under the Truth-
8 in-Lending Act and the regulations issued thereunder by the
9 Federal Reserve Board, and may be used in satisfaction of
10 the disclosure requirements of that Act, and shall also in-
11 clude provision for execution of the waiver allowed by section
12 104 (c) .

13 SPECIAL INFORMATION BOOKLETS

14 SEC. 103. (a) The Secretary shall prepare and distribute
15 special booklets to help persons borrowing money to finance
16 the purchase of residential real estate to better understand
17 the nature and costs of real estate settlement services. The
18 Secretary shall distribute such booklets to all lenders which
19 make federally related mortgage loans.

20 (b) Each booklet shall be in such form and detail as
21 the Secretary shall prescribe and, in addition to such other
22 information as the Secretary may provide, shall include in
23 clear and concise language—

24 (1) a description and explanation of the nature and
25 purpose of each cost incident to a real estate settlement;

5

1 (2) an explanation and sample of the standard real
2 estate settlement form developed and prescribed under
3 section 102;

4 (3) a description and explanation of the nature and
5 purpose of escrow accounts when used in connection with
6 loans secured by residential real estate;

7 (4) an explanation of the choices available to buyers
8 or residential real estate in selecting persons to provide
9 necessary services incident to a real estate settlement;
10 and

11 (5) an explanation of the unfair practices and un-
12 reasonable or unnecessary charges to be avoided by the
13 prospective buyer with respect to a real estate settlement.

14 Such booklets shall take into consideration differences in real
15 estate settlement procedures which may exist among the
16 several States and territories of the United States and among
17 separate political subdivisions within the same State and
18 territory.

19 (c) Each lender referred to in subsection (a) shall pro-
20 vide the booklet described in such subsection to each person
21 from whom is receives an application to borrow money to
22 finance the purchase of residential real estate. Such booklet
23 shall be provided at the time of receipt of such application.

24 (d) Booklets may be printed and distributed by lenders

1 if their form and content are approved by the Secretary as
2 meeting the requirements of subsection (b) of this section.

3 ADVANCE DISCLOSURE OF SETTLEMENT COSTS

4 SEC. 104. (a) Any lender agreeing to make a federally
5 related mortgage loan shall provide or cause to be provided
6 to the prospective borrower and to any officer or agency of
7 the Federal Government proposing to insure, guarantee, sup-
8 plement, or assist such loan, at least ten days prior to settle-
9 ment, upon the standard real estate settlement form developed
10 and prescribed under section 102 and in accordance with reg-
11 ulations prescribed by the Secretary, an itemized disclosure
12 in writing of each charge arising in connection with such
13 settlement. For the purpose of complying with this section, it
14 shall be the duty of the lender agreeing to make the loan to
15 obtain or cause to be obtained from persons who provide or
16 will provide services in connection with such settlement the
17 amount of each charge they intend to make. With respect to
18 any charges arising in connection with the settlement, in the
19 event the exact amount of any such charge is not available, a
20 good faith estimate of such charge may be provided.

21 (b) If any lender fails to provide a prospective borrower
22 with the disclosure as required by subsection (a), it shall be
23 liable to such borrower in an amount equal to—

24 (1) the actual damages involved or \$500, whichever
25 is higher, and

1 (2) in the case of any successful action to enforce
2 the foregoing liability, the costs of the action together
3 with a reasonable attorney's fee as determined by the
4 court;

5 except that a lender may not be held liable for a violation in
6 any action brought under this subsection if it shows by a pre-
7 ponderance of the evidence that the violation was not inten-
8 tional and resulted from a bona fide error notwithstanding the
9 maintenance of procedures adopted to avoid any such error.

10 (c) The provisions of subsection (a) shall be deemed
11 to be satisfied with respect to any settlement involving a
12 federally related mortgage loan if the disclosure required
13 by subsection (a) is provided at any time prior to settlement
14 and the prospective borrower executes, under terms and
15 conditions prescribed by regulations to be issued by the
16 Secretary after consultation with the Federal Reserve Board,
17 a waiver of the requirement that the disclosure be provided
18 at least ten days prior to such settlement.

19 (d) With respect to any particular transaction involv-
20 ing a federally related mortgage loan, no borrower shall
21 maintain an action or separate actions against any lender
22 under both the provisions of this section and the provisions
23 of section 130 of the Consumer Credit Protection Act of
24 1968 (15 U.S.C. 1640).

1 PROHIBITION AGAINST KICKBACKS AND UNEARNED FEES

2 SEC. 105. (a) No person shall give and no person shall
3 accept any fee, kickback, or thing of value pursuant to any
4 agreement or understanding, oral or otherwise, that business
5 incident to or a part of a real estate settlement involving a
6 federally related mortgage loan shall be referred to any
7 person.

8 (b) No person shall give and no person shall accept
9 any portion, split or percentage of any charge made or re-
10 ceived for the rendering of a real estate settlement service
11 in connection with a transaction involving a federally re-
12 lated mortgage loan other than for services actually per-
13 formed.

14 (c) Nothing in this section shall be construed as pro-
15 hibiting (1) the payment of a fee (i) to attorneys at law
16 for services actually rendered or (ii) by a title company
17 to its duly appointed agent for services actually performed
18 in the issuance of a policy of title insurance or (iii) by a
19 lender to its duly appointed agent for services actually per-
20 formed in the making of a loan, or (2) the payment to any
21 person of a bona fide salary or compensation or other pay-
22 ment for goods or facilities actually furnished or for services
23 actually performed.

24 (d) (1) Any person or persons who violate the pro-
25 visions of this section shall be fined not more than
26 \$10,000 or imprisoned for not more than one year, or both.

1 (2) In addition to the penalties provided by paragraph
2 (1) of this subsection, any person or persons who violate
3 the provisions of subsection (a) shall be jointly and severally
4 liable to the person or persons whose business has been re-
5 ferred in an amount equal to three times the value or amount
6 of the fee or thing of value, and any person or persons who
7 violate the provisions of subsection (b) shall be jointly and
8 severally liable to the person or persons charged for the set-
9 tlement services involved in an amount equal to three times
10 the amount of the portion, split, or percentage.

11 JURISDICTION OF COURTS

12 SEC. 106. Any action to recover damages pursuant to
13 the provisions of section 104 or 105 may be brought in the
14 United States district court for the district in which the prop-
15 erty involved is located, or in any other court of competent
16 jurisdiction, within one year from the date of the occurrence
17 of the violation.

18 VALIDITY OF CONTRACTS AND LIENS

19 SEC. 107. Nothing in this Act shall affect the validity
20 or enforceability of any sale or contract for the sale of real
21 property or any loan, loan agreement, mortgage, or lien
22 made or arising in connection with a federally related mort-
23 gage loan.

10

1 REPEAL OF EXISTING LAW

2 SEC. 108. Section 701 of the Emergency Home Finance
3 Act of 1970 is repealed.

4 EFFECTIVE DATE

5 SEC. 109. The provisions of this Act, and the amend-
6 ments made thereby, shall become effective one hundred and
7 eighty days after the date of the enactment of this Act.

IN THE SENATE OF THE UNITED STATES

Mr. JAVITS introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

Neighborhood Conservation Act.

5 PURPOSE

II

1 insurance designed to generate private capital for housing
2 repairs, maintenance, and rehabilitation.

3 GRANTS OF NEIGHBORHOOD CONSERVATION AREAS

4 SEC. 3. For the purpose of this Act, the term "neigh-
5 borhood conservation area" means any area in which (1)
6 the predominant residential area is housing for low- and
7 middle-income families, and (2) such housing, though
8 basically sound, is threatened with decay and abandonment
9 or is in need of repair, maintenance, rehabilitation, or
10 refinancing.

11 PROGRAM AUTHORITY

12 SEC. 4. (a) The Secretary of Housing and Urban
13 Development (hereafter referred to as the "Secretary")
14 is authorized to make, and to contract to make, grants under
15 this section to cities, municipalities, counties, and other
16 general purpose units of local government to assist them
17 in carrying out designated neighborhood conservation area
18 programs designed to improve basic community facilities and
19 services and bring about such other changes as may be
20 necessary or appropriate to eliminate the threat of housing
21 abandonment or decay in such areas and to restore and
22 maintain such areas as suitable and stable living environ-
23 ments.

24 (b) Grants under this section may cover a period of
25 not to exceed five years and may provide 100 per centum

3

1 of the cost of any of the following types of activities within
2 the neighborhood conservation area:

3 (1) The repair of streets, sidewalks, playgrounds,
4 schoolyards, paths, street lights, traffic signs and signals,
5 publicly owned utilities, or public buildings which have an
6 impact on the quality of life in the neighborhood.

7 (2) The improvement of private properties to eliminate
8 dangers to the public health and safety.

9 (3) The demolition of structures determined to be struc-
10 turally unsound or unfit for occupancy.

11 (4) The establishment of temporary or permanent pub-
12 lic playgrounds or parks within the area to serve residents of
13 the neighborhood.

14 (5) Other similar neighborhood-oriented activities and
15 improvements calculated to aid significantly in achieving the
16 objectives of this section.

17 (6) Assistance to qualified neighborhood-based nonprofit
18 organizations in carrying out development activities under
19 other provisions of this Act or in carrying out management
20 training, maintenance, or tenant education programs.

21 (c) To be eligible for assistance under this section, a
22 locality acting through its chief executive authority, shall
23 designate a specific area and prepare and submit to the
24 Secretary a plan specifying—

25 (1) the improvements in basic community facilities

1 and services to be made in such area over the five-year
2 period in which such improvements will be made;

3 (2) the programs to be introduced to improve the
4 quality of housing in the area; and

5 (3) the public and private resources which will be
6 marshaled to carry out such improvements and pro-
7 grams.

8 (d) Grants under this section shall be made, or shall
9 continue to be in effect, with respect to any neighborhood
10 conservation area if the Secretary finds that—

11 (1) the five-year plan submitted by the locality
12 involved is workable and will provide an effective means
13 of carrying out the purposes of this Act in such areas;

14 (2) the locality has the necessary resources to carry
15 out in a timely fashion all of the improvements and pro-
16 grams set forth in the plan;

17 (3) the locality continues to make significant prog-
18 ress toward achieving its objectives it established for
19 itself in the plan during the term of the grant; and

20 (4) the locality satisfies such other conditions and
21 requirements as the Secretary may prescribe to insure
22 that the purpose of this Act will be achieved.

23 (e) There are authorized to be appropriated for grants
24 under this section not to exceed \$100,000,000 for the fiscal
25 year ending June 30, 1974, not to exceed \$150,000,000 for

1 the fiscal year ending June 30, 1975, and not to exceed
2 \$220,000,000 for the fiscal year ending June 30, 1976. Any
3 amount so appropriated shall remain available until expended,
4 and any amount authorized for any fiscal year under this
5 subsection which is not appropriated may be appropriated
6 for any succeeding fiscal year commencing prior to July 1,
7 1976.

8 (f) The Secretary is authorized to designate an area
9 which meets the requirements of this section as a neighbor-
10 hood conservation area notwithstanding the unavailability of
11 funds for grants under this section. Upon such designation,
12 the Secretary may furnish other assistance (including as-
13 sistance under any mortgage insurance or related housing
14 maintenance program) to such area.

15 FEDERAL MORTGAGE INSURANCE TO FACILITATE SALE OR
16 REFINANCING OF HOUSING IN NEIGHBORHOOD CONSER-
17 VATION AREAS

18 SEC. 5. (a) Title II of the National Housing Act is
19 amended by adding at the end thereof the following new
20 section:

21 "MORTGAGE INSURANCE IN NEIGHBORHOOD
22 CONSERVATION AREAS

23 "SEC. 244. (a) The purpose of this section is to help
24 preserve and upgrade the quality of housing in designated
25 neighborhood conservation areas by facilitating the rehabil-

1 itation refinancing of such housing or its transfer to tenant-
2 or neighborhood-based corporate ownership.

3 “(b) The Secretary is authorized to insure any mort-
4 gage in accordance with the provisions of this section and to
5 make commitments for such insurance prior to the date of
6 the execution of the mortgage or disbursement thereon upon
7 such terms and conditions as he may prescribe.

8 “(c) In order to carry out the purpose of this section,
9 the Secretary is authorized to insure any mortgage which
10 covers residential property located in a neighborhood con-
11 servation area approved for assistance under section 4 of the
12 Neighborhood Conservation Act or any area designated as a
13 neighborhood conservation area under section 4 (e) of such
14 Act, subject to the following conditions:

15 “(1) The mortgage shall cover a multifamily rental
16 property, or a cooperative or condominium property which
17 is basically sound or capable of being placed in standard
18 condition without substantial rehabilitation and which con-
19 tains—

20 “(A) more than one but less than seven dwelling
21 units if the mortgagor is an individual or entity de-
22 scribed in paragraph (2) of this subsection; or

23 “(B) seven or more dwelling units if the mort-
24 gator is an organization described in paragraph (3) of
25 this subsection.

1 “(2) The mortgage covering property referred to in
2 paragraph (1) (A) of this subsection shall be executed by—

3 “(A) an individual who owns the property and oc-
4 cupies the property and is refinancing outstanding in-
5 debtedness related to the property, or who is purchasing
6 the property and will occupy one or more of the units in
7 the property after its purchase;

8 “(B) a cooperative or condominium organization
9 which consists of a majority of the residential units on
10 the property; or

11 “(C) a private nonprofit organization which is
12 based in the neighborhood in which the property is lo-
13 cated and which is approved by the Secretary.

14 “(3) The mortgage on a property referred to in para-
15 graph (1) (B) of this subsection shall be executed by—

16 “(A) a cooperative or condominium organized
17 which consists of or includes a majority of the occupants
18 of the property;

19 “(B) a private nonprofit organization or associa-
20 tion approved by the Secretary; or

21 “(C) a limited dividend ownership entity (as de-
22 fined by the Secretary) including, but not limited to,
23 corporations, general or limited partnerships, trusts, asso-
24 ciations, and single proprietorships.

25 “(4) In the case of a mortgage involving a mortgagor

1 referred to in paragraphs (2) (A), (2) (B), and (3) (A)
2 the mortgage shall include a principal obligation, including
3 such initial services charges, discounts, appraisal, inspection,
4 and other fees, as the Secretary shall approve in an amount
5 not to exceed the sum of 97 per centum of the Secretary's
6 estimate of the value of the property before any repairs or
7 improvements deemed necessary by the Secretary to help
8 restore or maintain the area in which the property is situated
9 as a stable and suitable living environment, except that in
10 no case involving refinancing shall such principal amount
11 exceed such estimated cost of repairs and improvements and
12 the amount (as determined by the Secretary) required to
13 refinance existing indebtedness secured on the property.

14 “(5) In the case of a mortgage involving a mortgagor
15 referred to in paragraph (2) (C) or (3) (B), the mortgage
16 shall include a principal obligation, including such initial
17 services charges, discounts, appraisal, inspection, and other
18 fees, as the Secretary shall approve in an amount not to
19 exceed the sum of 100 per centum of the Secretary's esti-
20 mate of the value of the property before any repairs or
21 improvements deemed necessary by the Secretary to help
22 restore or maintain the area in which the property is situ-
23 ated as a stable and suitable living environment, except that
24 in no case involving refinancing shall such principal amount
25 exceed such estimated cost of repairs and improvements and

1 the amount (as determined by the Secretary) required to
2 refinance existing indebtedness secured in the property.

3 “(6) In the case of a mortgage involving a mortgagor
4 referred to in paragraph (3) (C), the mortgage shall in-
5 clude a principal obligation, including such initial services
6 charges, discounts, appraisal, inspection, and other fees, as
7 the Secretary shall approve in an amount not to exceed the
8 sum of 90 per centum of the Secretary’s estimate of the value
9 of the property before any repairs or improvements deemed
10 necessary by the Secretary to help restore or maintain the
11 area in which the property is situated as a stable and suitable
12 living environment, except that in no case involving re-
13 financing shall such principal amount exceed such estimated
14 cost of repairs and improvements and the amount (as deter-
15 mined by the Secretary) required to refinance existing in-
16 debtedness secured on the property.

17 “(7) The mortgage shall—

18 “(A) provide for complete amortization by peri-
19 odic payments within such term (not exceeding forty
20 years) as the Secretary shall prescribe, except that in
21 the case of a property referred to in paragraph (1) (A)
22 such term shall not exceed twenty years;

23 “(B) bear interest (exclusive of premium charges
24 for insurance and service charges, if any) on the amount
25 of the principal obligation outstanding at any time at

1 not to exceed such per centum per annum as the Secre-
2 tary finds necessary to meet the mortgage market.

3 “(8) The Secretary shall not insure any mortgage under
4 this section unless he has received satisfactory and enforce-
5 able assurances from the mortgagor that the refinancing or
6 sale of the property (and any improvements thereto) will
7 not result, directly or indirectly, in any increase in the rentals
8 or other charges for dwelling units in the property for a period
9 of at least one year from the date of final endorsement for
10 mortgage insurance, or in any increases in such rentals there-
11 after in excess of such increases as the Secretary finds justi-
12 fied and approves on the basis of increased operating ex-
13 penses. In addition, the Secretary may place such further
14 restrictions on the mortgagor as to sales, charges, capital
15 structure, rate of return, and methods of operation as, in
16 the opinion of the Secretary, will best effectuate the pur-
17 pose of this section.

18 “(d) (1) For the purpose of maintaining or reducing
19 rentals or other charges for properties insured under this
20 section, the Secretary is authorized to make, and to contract
21 to make periodic interest reduction payments on behalf of
22 the owners of the properties but for the benefit of the resi-
23 dents, which shall be accomplished through payments to
24 mortgagees holding mortgages meeting the special require-
25 ments of this subsection.

1 “(2) Interest reduction payments with respect to a
2 property shall only be made during such time as the prop-
3 erty is operated as a rental housing and is subject to a
4 mortgage which meets the requirements of, and is insured
5 under, this section.

6 “(3) The interest reduction payments to a mortgagee
7 by the Secretary on behalf of a property shall be in an
8 amount not exceeding the difference between the monthly
9 payment for principal, interest, and mortgage insurance
10 premium which the property owner as a mortgagor is obli-
11 gated to pay under the mortgage and the monthly payment
12 for principal and interest such property owner would be
13 obligated to pay if the mortgage were to bear interest at
14 the rate of 4 per centum per annum.

15 “(4) The Secretary may include in the payment to
16 the mortgagee such amounts, in addition to the amount
17 computed under this subsection as he deems appropriate
18 to reimburse the mortgagee for its expenses in handling the
19 mortgage.

20 “(5) As a condition for receiving the benefits of interest
21 reduction payments, the owner shall operate the project
22 in accordance with such requirements with respect to tenant
23 eligibility and rents as the Secretary may prescribe.

24 “(c) The Secretary may consent to the release of a part
25 or parts of the mortgaged property from the lien of any

1 mortgage insured under this section upon such terms and
2 conditions as he may prescribe.

3 “(f) Prior to insuring any mortgage under this section,
4 the Secretary shall obtain satisfactory and enforceable as-
5 surances from the mortgagor that all repairs and improve-
6 ments necessary to place the underlying property in stand-
7 ard condition have been or will be made and that such
8 property will be continuously maintained in standard con-
9 dition.

10 “(g) The Secretary shall cooperate with the Secretary
11 of Labor and the Secretary of Health, Education, and Wel-
12 fare, to insure that, to the greatest extent feasible, funds
13 appropriated under the Manpower Development and Train-
14 ing Act of 1962, as amended, shall be made available on a
15 priority basis for training and employment support use in
16 connection with improvements financed by mortgages in-
17 sured under this section. The Secretary shall cooperate with
18 the Director of the Office of Minority Business Enterprises,
19 the Director of the Educational Development Agency, and
20 the Administrator of the Small Business Administration, to
21 insure maximum utilization of minority and small business
22 contractors in connection with improvements financed by
23 mortgages insured under this section.

24 “(h) In administering the program established by this
25 section, the Secretary shall use his best efforts to enlist the

1 support and actual cooperation of State and local govern-
2 ments in establishing State or local mortgage lending funds,
3 in providing adequate municipal services in low- and moder-
4 ate-income areas, particularly in areas threatened by building
5 abandonment, and in insuring, to the maximum extent
6 feasible, the administration of laws and ordinances relating
7 to existing housing stock, including building codes, housing
8 codes, health and safety codes, zoning laws, and property
9 tax laws, in such manner as will encourage maximum utili-
10 zation of this program in accordance with the purposes
11 herein expressed.

12 “(1) The Secretary shall develop and maintain full
13 information and statistics regarding the utilization of and
14 experiences incurred under this program, which shall in-
15 clude, but not be limited to, information and statistics con-
16 cerning—

17 “(1) financial market conditions, including the
18 interest rates, payback periods, and other terms and
19 conditions affecting housing eligible to be financed
20 hereunder;

21 “(2) the character, extent, and actual costs of re-
22 pairs, renovations, and moderate housing rehabilitation
23 undertaken hereunder;

24 “(3) factors affecting and statistics showing the
25 extent of actual and potential utilization of this program;

1 “(4) factors affecting the processing time of appli-
2 cations submitted hereunder and statistics showing proc-
3 essing times actually experienced;

4 “(5) mortgage arrearages and defaults on mort-
5 gage loans insured hereunder;

6 “(6) abuses of the program, actual or potential,
7 and remedial or punitive actions taken in connection
8 therewith; and

9 “(7) the costs of administering this mortgage-
10 insurance program, provided by this section.

11 The Secretary shall submit each year to the Congress and to
12 the President an annual report summarizing such informa-
13 tion. Such report shall include his analysis of the effective-
14 ness and scope of the program and his recommendations for
15 its improvement and greater utilization.

16 “(j) If the Secretary determines that the unavailability
17 of property insurance coverage is hindering the widespread
18 utilization of this program, he shall take all practicable steps
19 to insure that the protections and benefits of the Urban
20 Property Protection and Reinsurance Act of 1968 are uti-
21 lized to provide adequate property insurance coverage for
22 mortgagors and mortgagees under this program.

23 “(k) If the Secretary determines that widespread utili-
24 zation of this program is hindered by the charging of points
25 or discounts by mortgagees, he shall take steps to implement

15

1 the Government National Mortgage Association's authority
2 under section 305 (j) of this Act to purchase and make
3 commitments to purchase mortgages insured under this sec-
4 tion, at a price equal to the unpaid principal amount thereof
5 at the time of purchase, with adjustments for interest and
6 any comparable items, and to sell such mortgages at any
7 time at a price within the range of market prices for the
8 particular class of mortgages involved at the time of sale as
9 determined by the Association.

10 “(l) If the Secretary determines that widespread utili-
11 zation of this program is hindered by delays in processing
12 and approval of projects, he shall establish procedures to
13 insure, to the maximum extent feasible, the expeditious
14 processing and approval of applications for insurance here-
15 under, including, where necessary and appropriate, the use
16 of procedures and practices similar to those under title I
17 (home improvement loans).

18 “(m) There are authorized to be appropriated such
19 sums as may be necessary to carry out the provisions of this
20 section, including such sums as may be necessary to make
21 interest reduction payments under contracts entered into
22 by the Secretary under this section. The aggregate amount
23 of outstanding contracts to make such payments shall not
24 exceed amounts approved in appropriation Acts and pay-
25 ments pursuant to such contracts shall not exceed \$50,-

1 000,000 per annum prior to July 1, 1974, which maxi-
2 mum dollar amount shall be increased by \$100,000,000 on
3 July 1, 1975, by \$150,000,000 on July 1, 1976.”

IN THE SENATE OF THE UNITED STATES

Mr. PROXMIER introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

To regulate closing costs and settlement procedures in federally related mortgage transactions.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

SHORT TITLE

SECTION 1. This Act may be cited as the “Closing Cost
Reduction Act of 1973”.

FINDINGS AND PURPOSE

7 SEC. 2. The Congress finds that consumers throughout
8 the Nation—especially low- and moderate-income consum-
9 ers—must be protected from abusive real estate transaction
10 practices which have resulted in unreasonably high settlement
11 charges. It is the purpose of this Act to protect the consumer

1 (a) by eliminating conflict of interest situations between
2 lenders, sellers, and all others providing real estate transaction
3 services; (b) by establishing a standard for reasonable real
4 estate settlement transaction costs; (c) by requiring advance
5 disclosure to both home buyers and home sellers of real estate
6 settlement commissions, fees, and charges in order to provide
7 buyers and sellers alike with the knowledge and opportunity
8 to protect their interests; and (d) by establishing an effi-
9 cient, uniform system of recording real estate transactions.

10 DEFINITIONS

11 SEC. 3. For the purposes of this Act—

12 (1) the term “federally related mortgage loan” in-
13 cludes any loan which—

14 (A) is secured by residential real property
15 designed principally for the occupancy of from one
16 to four families, but also including residential prop-
17 erties sold as condominiums and cooperatives regard-
18 less of size; and

19 (B) (i) is made in whole or in part by any
20 lender the deposits or accounts of which are insured
21 by any agency of the Federal Government, or is
22 made in whole or in part by any lender which is
23 itself regulated by an agency of the Federal Govern-
24 ment;

25 (ii) is made in whole or in part, or insured,

3

1 guaranteed, supplemented, or assisted in any way,
2 by the Secretary or any other officer or agency of
3 the Federal Government or under or in connection
4 with a housing or urban development program ad-
5 ministered by the Secretary or a housing or related
6 program administered by any other such officer or
7 agency;

8 (iii) is eligible for purchase by the Federal
9 National Mortgage Association, the Government
10 National Mortgage Association, or the Federal
11 Home Loan Mortgage Corporation, or from any
12 financial institution from which it could be pur-
13 chased by the Federal Home Loan Mortgage Cor-
14 poration; or

15 (iv) is made in whole or in part by any “cred-
16 itor”, as defined in section 103 (f) of the Truth in
17 Lending Act (15 U.S.C. 1602 (f)), who makes or
18 invests in residential real estate loans aggregating
19 more than \$1,000,000 a year;

20 (2) the term “thing of value” includes any pay-
21 ment, advance, funds, loan, service, or other consider-
22 ation;

23 (3) the term “title services” includes—

24 (A) the performance of title examinations,

1 (B) the furnishing of title abstracts or similar
2 documents,

3 (C) the furnishing of legal opinions on the
4 status of a title and the routine preparation of all
5 documents pertaining to the conveyance of title,
6 and

7 (D) the escrow closing of settlements and the
8 furnishing of title insurance for the protection of a
9 lender, a homeowner, or both;

10 (4) the term "title company" means any institu-
11 tion which issues title insurance, directly or through its
12 agents, and also refers to any duly authorized agent of
13 a title company;

14 (5) the term "commission" includes any portion,
15 split, or percentage of any or all charges for title serv-
16 ices paid to an attorney, except that such term does not
17 include—

18 (A) reasonable charges paid for actual legal
19 services rendered in connection with title work
20 (otherwise than in connection with the selection
21 or procurement of insurance from a title company)
22 which are personally and actually performed by
23 an attorney representing a buyer, seller, a lender,
24 a title company, or any two or more of the forego-
25 ing, or

5

1 (B) regular salary or incentive compensation
2 paid to an attorney employed full time by a title
3 company or by any abstractor; and

4 (6) the term "Secretary" means the Secretary of
5 Housing and Urban Development.

6 MAXIMUM AMOUNT OF ALLOWABLE SETTLEMENT COSTS
7 IN FEDERALLY RELATED MORTGAGE TRANSACTIONS

8 SEC. 4. (a) (1) The Secretary, in consultation with the
9 Administrator of Veterans' Affairs, the Federal Deposit In-
10 surance Corporation, and the Federal Home Loan Bank
11 Board, shall establish the maximum amounts of the charges
12 to be imposed upon the borrower and seller for services inci-
13 dent to or a part of a real estate settlement (stating such
14 amounts separately for each of the principal kinds of such
15 charges) which may be allowed in connection with the fi-
16 nancing of housing constructed, purchased, or rehabilitated
17 with the assistance of federally related mortgage loans. Such
18 maximum amounts, which shall be designed to reflect the
19 reasonable charges for necessary services involved in settle-
20 ments for particular classes of transactions and to assure that
21 settlement costs do not exceed such reasonable charges, may
22 vary as between different regions of the United States on
23 the basis of differences in cost levels, legal and administra-
24 tive requirements, and other relevant factors, but they shall
25 be consistent within any such region (except to the extent

6

1 absolutely necessary to reflect significant differences in the
2 amount and type of the services required and actually per-
3 formed in particular transactions or classes of transactions)
4 for all transactions involving federally related mortgage loans
5 without regard to the particular types of institutions, pro-
6 grams, or assistance involved.

7 (2) The maximum amounts established under para-
8 graph (1) shall from time to time be revised to the extent
9 necessary to keep them current.

10 (3) Maximum amounts of settlement charges to be
11 established under paragraph (1) or to be revised under
12 paragraph (2) shall be published in the Federal Register
13 with an opportunity afforded to interested parties to com-
14 ment in accordance with the requirements of subchapter II
15 of chapter 5 of title 5, United States Code; included in the
16 special information booklets prepared under section 5; and
17 otherwise disseminated as widely as possible. The limits
18 initially so established shall become effective one hundred
19 and eighty days after the date of the enactment of this Act.

20 (4) The authority given the Secretary under this sub-
21 section to establish maximum amounts of settlement charges
22 shall not include any authority to establish the maximum
23 amounts of real estate brokerage commissions otherwise than
24 in connection with housing which is being purchased, con-
25 structed, or rehabilitated with assistance provided under the

1 National Housing Act or chapter 37 of title 38, United
2 States Code; except that the Secretary may (in accordance
3 with paragraph (1)) establish the maximum amounts of
4 such commissions in connection with any or all housing being
5 financed with federally related mortgage loans in any particu-
6 lar jurisdiction when he determines, after consultation with
7 the Attorney General, that in the relevant market area sub-
8 stantial competition as between real estate brokers does not
9 exist.

10 (b) No lender shall make a federally related mortgage
11 loan unless it is demonstrated in accordance with regulations
12 prescribed by the Secretary that the settlement charges
13 imposed in connection with such loans do not exceed the
14 applicable maximum amounts established under subsection
15 (a); and no mortgage or mortgage loan shall be insured,
16 guaranteed, supplemented, purchased, or assisted in any way
17 by the Secretary or by any other officer or agency of the
18 Federal Government unless it is so demonstrated that the
19 settlement charges imposed in connection with such mortgage
20 or loan are within such maximum amounts. In accordance
21 with such regulations, the lender shall obtain such informa-
22 tion and assurances from persons who impose or intend to
23 impose charges which will constitute a part of the settlement
24 costs as may be necessary to comply with this subsection.

25 (c) (1) If any lender makes a federally related mortgage

1 loan and the settlement charges imposed in connection with
2 such loan are in excess of the applicable maximum amounts
3 established under subsection (a), such lender is liable to the
4 buyer of the property involved in an amount equal to—

5 (A) actual damages resulting or \$500, whichever
6 are higher, and

7 (B) in the case of any successful action to enforce
8 the foregoing liability, the costs of the action together
9 with a reasonable attorney's fee as determined by the
10 court.

11 (2) If a real estate settlement for which any lender has
12 agreed to make a federally related mortgage loan to a pros-
13 pective borrower does not occur because—

14 (A) a Federal officer or agency which proposed to
15 insure, guarantee, supplement, or assist such loan refuses,
16 pursuant to subsection (b), to do so, or

17 (B) such lender refuses to make the loan because
18 any person who is furnishing services incident to or a
19 part of such settlement furnishes such services at a charge
20 in excess of the applicable maximum amount established
21 under subsection (a), then such prospective borrower is
22 not liable to any person for any services rendered inci-
23 dent to or a part of such settlement.

24 (d) Section 701 of the Emergency Home Finance Act
25 of 1970 (12 U.S.C. 1710 note) is repealed.

UNIFORM SETTLEMENT STATEMENT

1 SEC. 5. The Secretary, in consultation with the Admin-
2 istrator of Veterans' Affairs, the Federal Deposit Insurance
3 Corporation, and the Federal Home Loan Bank Board, shall
4 develop and prescribe a single standardized form for the state-
5 ment of all settlement costs which shall be uniformly used
6 (with only such minimum variations, in different areas, as
7 may be necessary to reflect unavoidable differences in legal
8 and administrative requirements) as the standard real estate
9 settlement form in all transactions in the United States which
10 involve federally related mortgage loans. Such form shall
11 conspicuously and clearly itemize all the charges imposed
12 upon the borrower and the seller in connection with the set-
13 tlement and shall indicate that portion of any title insurance
14 for which a premium is included in such charges which covers
15 or insures the lender's interest in the property, and the por-
16 tion which covers or insures the borrower's interest.

SPECIAL INFORMATION BOOKLETS

18 SEC. 6. (a) The Secretary shall prepare and distribute
19 special booklets to help persons borrowing money to finance
20 the purchase of residential real estate to better understand
21 the nature and cost of real estate settlements. The Secretary
22 shall distribute such booklets to all lenders which make fed-
23 erally related mortgage loans.
24

1 (b) Each booklet shall be in such form and detail as the
2 Secretary shall prescribe and, in addition to such other infor-
3 mation as the Secretary may provide, shall include in clear
4 and concise language—

5 (1) a description and explanation of the nature and
6 purpose of each cost incident to a real estate settlement;

7 (2) an itemized list indicating the maximum
8 amounts of the charges which a borrower should be pre-
9 pared to pay in connection with a real estate settlement
10 as established under section 2 (a), taking into considera-
11 tion the actual cost of performing each service;

12 (3) an explanation and sample of the standard real
13 estate settlement form developed and prescribed under
14 section 4;

15 (4) an explanation of the appropriate manner by
16 which buyers of residential real estate may select persons
17 to provide necessary services incident to a real estate
18 settlement; and

19 (5) an explanation of the unfair practices and un-
20 reasonable or unnecessary charges to be avoided by the
21 prospective buyer with respect to a real estate settlement.

22 Such booklets shall take into consideration differences in
23 real estate settlement procedure which may exist between the
24 several States and territories of the United States and between

1 separate political subdivisions within the same State and
2 territory as a result of legal and administrative requirements.

3 (c) Each lender referred to in subsection (a) shall pro-
4 vide the booklet described in such subsection to each person
5 from whom it receives an application to borrow money to
6 finance the purchase of residential real estate. Such booklet
7 shall be provided at the time of such receipt of such
8 application.

9 (d) Booklets prepared by the Secretary and meeting
10 the requirements of subsection (b) may be printed and
11 distributed by lenders with the approval of the Secretary.

12 ADVANCE DISCLOSURE OF SETTLEMENT COSTS

13 SEC. 7. (a) Any lender agreeing to make a federally
14 related mortgage loan shall provide to the prospective bor-
15 rower, to the prospective seller, and to any officer or agency
16 of the Federal Government proposing to insure, guarantee,
17 supplement, or assist such loan, at least ten days prior to
18 settlement, upon the standard real estate settlement form
19 developed and prescribed under section 4 and in accord-
20 ance with regulations prescribed by the Secretary, an item-
21 ized disclosure in writing of each charge arising in connec-
22 tion with such settlement. For the purpose of complying
23 with this section, it shall be the duty of the lender agreeing
24 to make the loan to obtain from persons who provide or

1 will provide services in connection with such settlement the
2 amount of each charge they intend to make. With respect
3 to any charges arising in connection with the settlement, in
4 the event the exact amount of any such charge is not avail-
5 able, such lender shall provide the prospective buyer and
6 prospective seller with a good faith estimate of such charge.

7 (b) If any lender fails to provide any prospective bor-
8 rower or prospective seller with the disclosure as required by
9 subsection (a) or fails to act in good faith in providing an
10 accurate estimate of charges, it shall be liable to such bor-
11 rower or seller in an amount equal to—

12 (1) the actual damages involved or \$500, which-
13 ever is higher, and

14 (2) in the case of any successful action to enforce
15 the foregoing liability, the costs of the action together
16 with a reasonable attorney's fee as determined by the
17 court;

18 except that a lender may not be held liable for a violation
19 in any action brought under this subsection if it shows by
20 a preponderance of the evidence that the violation was not
21 intentional and resulted from a bona fide error notwithstand-
22 ing the maintenance of procedures adopted to avoid such
23 error.

24 PROHIBITION AGAINST KICKBACKS

25 SEC. 8. Any person who, in connection with a real
26 estate settlement involving a federally related mortgage loan,

1 accepts or furnishes anything of value pursuant to any agree-
2 ment, oral or otherwise, that business incident to or a part
3 of such settlement shall be referred to any person shall be
4 fined not more than \$10,000 or imprisoned for not more than
5 one year, or both.

6 PROHIBITION AGAINST RECEIPT OF TITLE INSURANCE

7 COMMISSIONS BY CERTAIN ATTORNEYS

8 SEC. 9. (a) No attorney who performs any legal serv-
9 ices which are incident to or a part of any real estate settle-
10 ment with respect to which any party to such settlement has
11 obtained a federally related mortgage loan shall receive any
12 commission in connection with the issuance of title insurance
13 for any real property which is a part of such settlement.

14 (b) Any attorney who violates the provisions of sub-
15 section (a) shall be liable to the person or persons charged
16 for the commission described in such subsection in an amount
17 equal to three times that commission.

18 FEE FOR PREPARATION OF TRUTH-IN-LENDING

19 STATEMENTS

20 SEC. 10. No fee shall be imposed or charge made upon
21 any other person (as a part of settlement costs or otherwise)
22 by a lender in connection with a federally related mortgage
23 loan made by it (or a loan for the purchase of a mobile
24 home), for or on account of the preparation and submission
25 by such lender of the statement or statements required (in
26 connection with such loan by the Truth in Lending Act.

14

1 ESTABLISHMENT ON DEMONSTRATION BASIS OF LAND

2 PARCEL RECORDING SYSTEM

3 SEC. 11. The Secretary shall establish and place in oper-
4 ation on a demonstration basis, in representative political sub-
5 divisions (selected by him) in various areas of the United
6 States, a computerized system for the recordation of land
7 parcels in a manner and form calculated to facilitate and
8 simplify land transfers and mortgage transactions and reduce
9 the cost thereof, with a view to the eventual development
10 (utilizing the information and experience gained under the
11 demonstration programs provided for in this section) of a
12 nationally uniform computerized system of land parcel
13 recordation.

14 TITLE COMPANIES

15 SEC. 12. (a) Notwithstanding any law, any title com-
16 pany and its agents qualified to issue title insurance are au-
17 thorized to perform any and all title services in connection
18 with the issuance of such insurance in any real estate settle-
19 ment involving a federally related mortgage loan, if the per-
20 sons employed by such title company (or agent) are quali-
21 fied to perform such services under applicable State law.

22 (b) No title company shall directly or indirectly issue
23 title insurance as part of any real estate settlement with re-
24 spect to which any party to such settlement has obtained a
25 federally related mortgage loan in any case where the seller

1 directly or indirectly owns or controls the insuring title
2 company.

3 (c) For purposes of this section, no company or other
4 person shall be considered the seller of the property involved
5 because it holds the legal title to such property in its name
6 if it holds such title exclusively as an agent, trustee, nominee,
7 or other fiduciary.

8 (d) For purposes of this section, a seller directly, or in-
9 directly owns or controls a title company if—

10 (1) the seller directly or indirectly or acting through
11 one or more other persons owns, controls, or has power
12 to vote 25 per centum or more of any class of voting se-
13 curities of the company;

14 (2) the seller controls in any manner the election
15 of a majority of the directors or trustees of the company;
16 or

17 (3) the Secretary determines, after notice and op-
18 portunity for hearing, that the seller directly or indi-
19 rectly exercises a controlling influence over the manage-
20 ment or policies of the company.

21 For the purposes of any proceeding under paragraph (3),
22 there is a presumption that any seller which directly or in-
23 directly owns, controls, or has power to vote less than 5 per
24 centum of any class of voting securities of a given company
25 does not have control over that company.

16

1 JURISDICTION OF COURTS

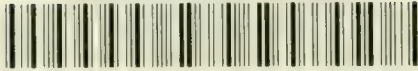
2 SEC. 13. Any action to recover damages pursuant to
3 the provisions of section 4, 7, or 9 may be brought in the
4 United States district court for the district in which the
5 property involved is located, or in any other court of com-
6 petent jurisdiction, within one year from the date of the
7 occurrence of the violation.

8 EFFECTIVE DATE

9 SEC. 14. The provisions of this Act, and the amend-
10 ments made thereby, shall become effective one hundred and
11 eighty days after the date of the enactment of this Act.



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